S. HRG. 99-268

FISHING VESSEL SAFETY AND INSURANCE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

FISHING VESSEL SAFETY AND INSURANCE

MARCH 25 AND OCTOBER 10, 1985

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

50-498 O WASHINGTON : 1985

S261-3

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FISHING VESSEL SAFETY AND INSURANCE

MONDAY, MARCH 25, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:30 p.m., in room SR-253, Russell Senate Office Building, Hon. Paul S. Trible, Jr., presiding.

Staff members assigned to this hearing: David Dye, Joseph Plesha, staff counsels and Jim Drewry, minority staff counsel.

OPENING STATEMENT BY SENATOR TRIBLE

Senator TRIBLE. Ladies and gentlemen, I am pleased to welcome you this afternoon to a hearing of the Merchant Marine Subcommittee of the Commerce Committee of the Senate. This afternoon we are examining the problem of escalating marine insurance rates and searching for possible solutions.

We will hear from Congressman Herbert Bateman and representatives of the Atlantic, Pacific, and gulf fishing industries, Thor Lassen of the National Council on Fishing Vessel Safety & Insurance, and Prof. Dennis Nixon of the University of Rhode Island, an expert on the subject of marine insurance.

In the next several weeks we will also hear from the National Marine Fisheries Service and representatives of the marine insurance industry.

As the Congressman of Virginia's First Congressional District, I often visited the watermen of the Chesapeake Bay. They were always pleased to visit, but always made sure I remembered one thing: They did not interfere with the Federal Government and did not want the Federal Government interfering with them. An academician might call that a policy of mutual benign neglect. My watermen called it minding your own business.

During the 9 years that I have been in Congress, I have learned that when a waterman comes to me for help he has a serious problem. Therefore, when a delegation of fishermen from Newport News and Hampton, VA, called on me last year about the availability and the cost of insurance, I knew they were not crying wolf.

Simply put, the insurance problem has become a crisis. Protection and indemnity premiums have skyrocketed and increasingly P&I coverage is just not available. Any operator who goes to sea without a P&I policy is playing Russian roulette. He is betting the keys of the company that no major injuries will occur.

The causes of the insurance problem are complex and they did not emerge overnight. We will examine them to some extent this day. They include escalating jury awards, development of the unseaworthiness doctrine into virtual absolute liability, the inability of insurance companies to adequately predict the risks in the fishing industry, and the lower rate of return which insurance companies have recently received on invested premiums.

Regrettably, there are also unsafe boats and careless captains and crews, and they must bear their share of the burden for the insurance crisis harming the entire industry.

Today we will also hear several solutions proposed. They include: modifications to the Jones Act, institution of a workers compensation system, replacement of jury trials with trials by a Federal judge sitting alone, establishment of a Federal reinsurance fund, institution of some type of inspection and licensing program.

I would note that this is the first formal congressional hearing on marine insurance problems in several years. It will certainly not be the last. My friend, Congressman John Breaux, has shown leadership in fishing matters for many years, and he has scheduled a series of hearings this spring and summer. It is my hope and my full expectation that the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee will work together to explore and advance solutions to this very real problem.

Our first witness this afternoon will be my colleague and friend Herb Bateman, who serves on the Merchant Marine and Fisheries Committee of the House and is a tireless and effective advocate for Virginia's fishing industry.

Congressman Bateman.

I would say at this point, that Senators Hollings, Inouye, and Kasten have opening statements that will be made a part of the record at this point.

[The statements follow:]

OPENING STATEMENT BY SENATOR KASTEN

Mr. Chairman, I want to thank you for holding this hearing on reform of marine insurance for the commercial fishing industry.

For too long, Congress has failed to distinguish between commercial fishermen and merchant seamen. The courts have perpetuated the problem because fishermen did not qualify for most State workmen's compensation systems.

We now find commercial fishermen unable to pay for the insurance plans that they have been forced to live under, without adequate safeguards to address specific needs.

I hope we can find some answers to many of the problems facing the industry today. The existing fault system, using the Jones Act and the unseaworthiness doctrine, do not appear to be able to provide the protections needed by U.S. fishermen.

Thank you, Mr. Chairman.

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, I am glad we are holding this hearing. Fishing vessel insurance has been increasingly hard to obtain, even for fishermen with good safety records.

In my own state of South Carolina, the number of companies writing insurance for fishing vessels has gone from six to one in a matter of a year. And the one company that is still providing coverage will not extend the coverage to fishing trips to the Gulf of Mexico. As you may know, the winter weather has not been good to our shrimpers in recent years. This year, for example, the effects of the winter freeze on the white shrimp in our coastal waters was so severe that the Small Business Administration has declared an economic disaster for 13 South Carolina counties.

When the shrimp are scarce off the coast, many of our shrimpers go to the Gulf so they can make ends meet. But now if they go to the Gulf, they have to fish without insurance.

My state is a good example of how interdependent the fishing industry is nationwide when it comes to insurance. Our South Carolina shrimpers haven't had trouble with large personal injury claims, but the companies that write insurance on their boats have been hit with very large Protection and Indemnity ("P & I") claims for fishing vessels in other parts of the country. As a result of these heavy losses elsewhere, our people cannot obtain coverage—in spite of actual claim experience.

This insurance problem is extremely serious. I look forward to hearing today's witnesses to see if we can begin to shape a solution.

OPENING STATEMENT BY SENATOR INOUYE

Mr. Chairman, our commercial fishing interests are facing serious problems today with the availability and affordability of insurance covering damage to their vessels and the injury or illness of their crewmembers.

As claims have increased in frequency and amount, underwriters have become scarce and prohibitively expensive. The result is a severe burden to a fishing industry that, frankly, is already faced with all the challenges and problems it can handle. In the case of the tuna industry, which is facing stiff foreign competition from countries with low labor costs and protective trade barriers, insurance rates have gone through the ceiling. In 1980 the average premium on a tuna vessel was $9,000. In 1984 this jumped to around $200,000, a rate 270% higher than its major foreign competitors pay. Clearly this is a problem that must be addressed promptly and decisively.

As the Committee deliberates on this matter, Mr. Chairman, I must offer one caution. Many questions have been raised lately about the Jones Act, which regulates shipping in this country, and indeed there are a number of vessel insurance issues which may pertain to the Jones Act. This Act, however, should not be dealt with on an ad hoc basis but rather should be approached in a comprehensive manner. I have proposed that a complete study be done of the Jones Act and recommendations made as to any changes that may be needed. I urge that the Committee not consider any alterations of the Act until results of such a study are known.

STATEMENT OF HON. HERBERT H. BATEMAN, U.S. REPRESENTATIVE FROM VIRGINIA

Mr. BATEMAN. Thank you very much.

Senator TRIBLE. Herb, you are most welcome.

Mr. BATEMAN. Thank you very much. I am most pleased to be here and want to commend you at the outset for the leadership you show in convening these hearings, which are of incredible importance to our seafood and fishing industries.

I would summarize my statement for the record, Senator, but it is sufficiently brief that if I tried to do it ad hoc it might be longer than the statement itself. So if I may.

Senator TRIBLE. I want you to take a Senator's license and filibuster if you must, or summarize your statement, whatever you would like to do, Herb.

Mr. BATEMAN. I am happy with the constraints of the House procedures this morning, or this afternoon, Senator.

Senator TRIBLE. We will operate under the 5-minute rule then, my friend.

Mr. BATEMAN. Since the passage of the Fisheries Conservation and Management Act of 1976, the commercial domestic harvests of fisheries resources has increased by nearly a third and the fisheries resources are available to allow their growth to continue. Unfortunately, with the growth of the fleet there has come a growth in the number and size of insurance claims brought against the industry,

and this growth in claims has resulted in a reluctance on the part of the insurance industry to continue to insure fishing vessels.

Currently very few companies offer fishing vessel insurance and a number of these remaining companies are considering terminating their coverage, and what coverage is available at all is becoming prohibitively expensive. If we are to continue our recent progress in developing increased domestic use of the fisheries resources in the exclusive economic zone of the United States, we must find a way to see that adequate insurance protection is available at affordable rates for our domestic fleet.

In my own district, the industry has made the decision to seek Government help in their efforts to re-establish adequate, affordable insurance. I commend my predecessor from the First Congressional District of Virginia, yourself, Senator, for providing this forum to address this problem so early in this session of the Congress.

In order to meet the goal of adequate protection for both the crews and the owners of our domestic fishing vessels, a number of issues must be addressed. We must address: One, whether mandatory vessel inspection and licensing of the captains of fishing vessels would improve domestic fleet safety; second, whether a new compensation system would provide fairer, more efficient remedies to injured fishermen than current maritime liability remedies.

Third, whether the design of fishery management plans are creating pressures which cause fishing under unsafe circumstances; and last, whether voluntary industry action can address these concerns or whether Federal legislation will be required.

If legislation is a part of the solution to this problem, let us address these issues after hearing from those whose lives and livelihood are dependent on solving the problem. Vessels that cannot be insured at rates that are affordable will not sail.

The forebearers of our constituents in the First Congressional District of Virginia were fishermen even before they were farmers. Now, many generations later, there are thousands of our constituents who proudly own and man the vessels which harvest the bounty of the sea. We must do what is wise and necessary to assure that this will continue.

The House Merchant Marine and Fisheries Committee, Senator, as you have indicated, also plans to address these issues, and I look forward to working with both my House and Senate colleagues in helping to maintain a strong, growing, safe, and prosperous American fisheries industry.

I thank you for the opportunity to appear.

Senator TRIBLE. Congressman Bateman, I commend you for the statement. I think you have properly set forth the parameters of our investigation and public debate, and I too look forward to working with you in the days ahead. I think it is essential that my former colleagues and your present colleagues on the Merchant Marine and Fisheries Committee of the House and those of us who serve on the Senate Commerce Committee tackle this problem together, and I look forward to doing that.

We have been joined by my distinguished friend and colleague from the State of Washington, Senator Gorton. Welcome.

Senator GORTON. Thank you, Mr. Chairman.

Thank you, Congressman. It is nice to have you here today. I have no opening statement.

Senator TRIBLE. Thank you.

Mr. BATEMAN. Thank you very much, Senator. I would only suggest from my conferences with interested constituents this morning, I think we are under some real injunction to get about finding a responsible solution and doing so in a very, very timely manner. The situation is that dire for the industry.

Let me add, only by way of suggestion, that given how acute is the problem, if we cannot find an enduring long-range solution that we have the maximum confidence in, let us at least consider without embarrassment to the long-range best solution whatever interim solutions can be more quickly adopted in order to favorably impact upon the problem.

Thank you, Senator.

Senator TRIBLE. We thank you.

Moving on, then, to Mr. Thor Lassen, the executive secretary of the National Council of Fishing Vessel Safety & Insurance.

Mr. Lassen, you are most welcome. I remember the days that we worked together when I was a Congressman and you were a sea grant fellow working on Capitol Hill. I benefited from that association. I enjoyed those days, and now I must say it is a great pleasure to sit as a Senator and welcome you to these hearings.

STATEMENT OF THOR LASSEN, EXECUTIVE SECRETARY, NATIONAL COUNCIL OF FISHING VESSEL SAFETY & INSURANCE

Mr. LASSEN. Thank you very much, Mr. Chairman. I would also like to say that I regard my tenure in your office as one of the greatest professional experiences that I have had. I enjoyed working with you then, and I look forward to working with you on this issue.

For the record, I am Thor Lassen, the executive secretary of the national council of Fishing Vessel Safety & Insurance. Our president, Mr. James Costakes, will be testifying on behalf of the New Bedford Seafood Council later today. On behalf of the national council, I would like to thank you, Mr. Chairman, and other members of the subcommittee for the opportunity to testify on this issue of fishing vessel safety and insurance.

I would like to summarize a brief history of the council and review some of the activities we have been involved in since we were established back in 1978. Our council is made up of representatives from the commercial fishing industry, the marine insurance industry, and other concerned individuals from the university and private sector. Each major fishery and trade association across the United States is presented in our organization.

The council has two fundamental goals: one, to improve vessel and crew safety; and two, reduce the cost of insurance to the U.S. fishing industry. With the support of the National Marine Fisheries Service, we have pursued these goals through both educational and research programs.

One of the research programs we have been involved in since 1982 is the development of a reliable data base on fishing casualties. Understanding the nature and extent of casualties occurring

in each fishery is necessary in order to focus our safety promotional efforts.

The council established a computerized system with the Marine Index Bureau for collecting and evaluating statistics on fishing vessel accidents and crew casualties using marine insurance underwriters as our primary source of data. We hope to have a useful statistical base available to the industry within the next few years.

Last April the council, together with the National Marine Fisheries Service, sponsored a conference in Washington, D.C., on fishing vessel safety and insurance programs. We had speakers from the fishing and insurance industry, universities, and Government agencies described various insurance and safety alternatives that could help the U.S. fishing industry. Although the recommendations varied widely, there was some consensus at the conference on the following three points, which were:

One, that P&I insurance problems are a much more serious concern to the fishing industry than hull insurance;

Two, that there is a need to control or limit the size of P&I insurance awards, or, in other words, limit the liability on vessel owners;

And three, that regional training and educational programs should be made available for crew and vessel owners on safety and loss control programs.

Within the next month, the council will initiate a study on the effect that fishery management regulations have on the safety of commercial fishing operations. Without getting into the details of that study, let me just say that our goal here is to establish vessel safety as a basic consideration in the development of all future fisheries management plans.

Numerous recommendations have been made to solve the insurance problems facing the commercial fishing industry during the past year at various meetings and conferences. We currently are in the process of surveying each fishery of the U.S. industry to determine their views on all of these recommendations, using a written questionnaire that is attached to our testimony. The results of our survey should be available by the end of April.

At this point, Mr. Chairman, we are not prepared to make specific recommendations regarding the P&I insurance issue. Questions still remain over how best to limit vessel owners' liability and over the costs and benefits associated with moving to various compensation options. We would appreciate your assistance in resolving these questions either by requesting that the Congressional Research Service or by assisting us in finding funding to carry out a cost-benefit study comparing current standards used for P&I claims with various other compensation systems.

We encourage the committee to examine as many alternatives as possible that could bring the cost of insurance to affordable levels and still provide fair compensation for injured fishermen. We certainly welcome your interest and concern and look forward to working with you in developing some sort of a system that we can all operate under.

Senator TRIBLE. Thank you for your testimony. Let me ask you a couple of questions and then I will defer to my colleague, Senator Gorton.

You state in your testimony that training and educational programs should be made available for crew and vessel owners on safety and loss control practices. What programs of this kind are available today and how are they working?

Mr. LASSEN. As you look across the United States, you find varying degrees of sophistication in terms of programs that are available. Many of the programs are sponsored by fishing companies or trade associations. Others are sponsored by Federal agencies such National Marine Fisheries Service, Sea Grant, and the U.S. Coast Guard.

Depending on which port you look at, you will see a different type of program. For example, the University of Alaska's Sea Grant Program has produced very impressive videotapes and information that is made available to fishermen on how to survive and react under different circumstances. Another example I would point to are the menhaden companies that have set up pre-season, week-long periods during which they review safety practices and conduct drills that they may have to undertake under various conditions. These companies conduct annual inspections on each vessel. They also have established incentive programs for each captain to try to improve their vessel's safety record.

In terms of summarizing or drawing any conclusions, I think one is that the best approach to education and training is a regional approach, because of the differences that exist in each fishery; also, that the closer a program is associated with a fishery association, the better the program will be, rather than just having a Government-sponsored program.

Senator TRIBLE. In your testimony you also state that the council will soon begin a study of the effect of fishery management regulations on the safety of commercial fishing operations. When do you anticipate that that study will be completed?

Mr. LASSEN. The grant was submitted last year, although we just received funding a few days ago. It was designed as a year-long study, so we anticipate the results in the spring of 1986.

We intend to interview fishermen and those that are familiar with fisheries management regulations to determine how regulations have affected the safety at sea. A classic example on the east coast is the surf clam fishery, where bad-weather days have been instituted to take the fishermen out of the situation where he has to choose between going to sea under adverse conditions or lose his fishing day. So, there are the situations that have arisen in the past and we intend to explore all of them or as many as possible.

Senator TRIBLE. As you know, we must reauthorize the Fishery Conservation and Management Act this year. Do you have a preliminary view as to a need to amend the statute to place a greater emphasis on safety?

Mr. LASSEN. That is certainly one of the goals of our study, that is to raise this issue with the councils and bring it to the forefront of their considerations when they recommend regulations. I think it would be very appropriate in the MFCMA amendment process to incorporate some options that the councils are allowed to consider regarding the safety of fishing vessels.

I do not have any specific recommendations at this point, but I think there are some opportunities, with the reauthorization of the MFCMA, to bring greater focus to this issue.

Senator TRIBLE. Some congressional showing that safety is a priority?

Mr. LASSEN. Exactly.

Senator TRIBLE. Senator Gorton.

Senator GORTON. No, thank you, Mr. Chairman.

Senator TRIBLE. To what extent is the P&I problem traceable to carelessness and human error, and to what extent is it caused by unsafe boats and equipment?

Mr. LASSEN. Well, I am not ready to make the assumption that the P&I problem is totally related to safety, although——

Senator TRIBLE. To the extent that it is.

Mr. LASSEN. To the extent that it is, most of our information has shown us that the vast majority of the problem has to do with human error. We see percentages of 80 to 90 percent of the casualties that are occurring are related to human error, and that is perhaps why we would recommend a greater focus on education and training, rather than vessel inspection.

Senator TRIBLE. I note that for the first time many in the fishing industry are beginning to view boat inspection and/or mandatory education and training more favorably, or perhaps I should say with less hostility.

Mr. LASSEN. If I may, Mr. Chairman, when vessel inspection is mentioned I think about the tuna fleet on the west coast, which is a very sophisticated fleet in terms of construction and the equipment that they have, which is very modern and goes beyond Coast Guard standards. Even operating under that sort of a situation, they still have a very serious problem with P&I insurance.

So in my mind it raises the question of whether or not our current insurance crisis has anything to do with the status of the vessel. Even if you have a very sophisticated vessel, you will still have P&I insurance problems.

Senator TRIBLE. Mr. Lassen, we look forward to working with you on this problem. I have some additional questions, but rather than taking your time and that of all those waiting to testify, let me submit those to you in writing.

Mr. LASSEN. I will be more than happy to respond to them.

Senator TRIBLE. Thank you, Thor.

Mr. LASSEN. Thank you.

[The statement follows:]

STATEMENT OF THE NATIONAL COUNCIL OF FISHING VESSEL SAFETY & INSURANCE

Mr. Chairman, members of the Committee, I am Thor Lassen, Executive Secretary of the National Council of Fishing Vessel Safety & Insurance. I am pleased to have with me today and introduce to the Committee Mr. James Costakes, the President of the National Council. On behalf of the Council, I would like to thank you, Mr. Chairman, and the other members of the Committee for the opportunity to testify on the subject of fishing vessel safety and insurance.

The National Council of Fishing Vessel Safety and Insurance was established in 1978 by representatives from the commercial fishing industry, marine insurance industry and other concerned individuals from the university and private sector. The Council has two fundamental goals: (1) improve vessel and crew safety, and (2) reduce the cost of insurance to the U.S. fishing industry. With the support of the

National Marine Fisheries Service, the Council has pursued these goals through both educational and research programs.

The Council publishes a quarterly newsletter which is distributed to over 400 companies and individuals in the fishing industry and provides information on programs, proposals, activities, and new developments in the area of vessel safety and insurance. The Council also distributes reports and information to the trade press and sponsores and participates in conferences across the U.S.

The identification of problem areas is the first step in the appropriate orientation of any safety promotion efforts. In 1982, the Council initiated a project with the Marine Index Bureau to develop a system for collecting and evaluating statistics on fishing vessel accidents and crew casualties. This involved creating specially designed casualty reporting forms (Attachment A) as well as a computerized system for processing and analyzing the data. Marine insurance underwriters are our primary source of data. The American Institute of Marine Underwriters recently agreed to assist us in establishing a broad data base that can be used to better define the nature and extent of casualties occurring in each fishery across the nation. We hope that with their support we will have a useful statistical basis available to the industry within the next few years.

Last April, the Council together with the National Marine Fisheries Service sponsored a national conference on fishing vessel safety and insurance programs here in Washington, D.C. Speakers from the fishing industry, insurance industry, coastal universities, and government agencies described various insurance and safety alternatives that could help the U.S. fishing industry. Although the recommendations varied widely, there was some consensus at the conference on the following general points: (1) P&I insurance problems are a much more serious concern to the fishing industry than hull insurance issues, (2) there is a need to control or limit the size of individual P&I insurance awards, and (3) training and educational programs should be made available for crew and vessel owners on safety and loss control practices.

Within the next month, the Council will initiate a study on the effect that fishery management regulations can have on the safety of commercial fishing operations. Concern over the impact that fishery regulations have on the safety of vessels has led to changes in some U.S. fisheries. For example, the use of bad weather make-up days in the surf clam fishery was instituted to take the fishermen out of the position of having to decide whether to go out under adverse sea conditions or lose his fishing day. We hope to establish vessel safety as a basic consideration in the development of all future fishery management plans.

Numerous recommendations have been made to solve the problems facing the commercial fishing industry in the area of vessel insurance and safety during the past year at various meetings and conferences. The Council currently is in the process of surveying the U.S. industry to determine their views on these recommendations using a written questionnaire (Attachment B). The results of our survey will be available by the end of April.

At this point, Mr. Chairman, we are not prepared to make specific recommendations regarding P&I insurance. Questions still remain over the appropriate limits of vessel liability, and the costs and benefits associated with various compensation options. We would encourage the Committee to examine as many alternatives as possible that could bring the costs of insurance to affordable levels and still provide fair compensation for injured fishermen. We welcome your interest and concern and look forward to working with you on an approach to this issue that we can all operate under.

[The following information was subsequently received for the record:]

NATIONAL COUNCIL OF FISHING VESSEL SAFETY & INSURANCE,
Washington, DC, May 7, 1985.

Hon. TED STEVENS,
U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR SENATOR STEVENS: It is my pleasure to respond to the written questions from the Merchant Marine Subcommittee hearing on safety and insurance problems in the fishing industry.

Question 1. I understand that your organization receives some support through the Saltonstall-Kennedy program. What is your current level of federal funding? How much does industry contribute?

Answer. The National Council of Fishing Vessel Safety and Insurance has three active S-K grants. Attached are copies of the grants for your information.

The S-K grants for the Fishing Vessel Safety Program and the Monthly News Column for Industry Trade Publications will expire in December 1985. The Fishing Vessel Safety Program which was originally funded for $60,000 ($48,000 federal/$12,000 industry) has approximately $8,000 left and the News Column project originally funded for $5,700 ($4,560 federal/$1,140 industry) has approximately $2,500 left. The total current level of federal funding for these two projects is approximately $10,500.

The industry match for all projects run at about 20 percent of the total project costs as required by National Marine Fisheries Service regulations. The actual industry contributions in terms of peoples time, travel expenses, office equipment costs normally far exceeds the 20 percent required match.

The Council's third active grant was received in early April. The grant is funded at a total level of $47,500 (38,000 federal/$9,500 industry) and will be carried out over a one year period.

Question 2. Has the Counsel conducted any research to see if fishermen's P&I awards have grown faster than those for non-maritime torts?

Answer. No.

Question 3. There are two basic ways that P&I awards increase insurance premiums. One is for the size of the award to increase, the other is for the number of claims to increase presumably because the number of accidents has increased. Have you done any research to see how these factors are related?

Answer. The Council has not sponsored any research in this area. Some of the regional fishery associations have kept track of claims and settlements in their fisheries. For example, the American Tunaboat Association indicated during a vessel safety and insurance conference in April 1984 that although the number of P&I cases decreased over the last 10-15 years the size of individual awards and settlements have increased dramatically. Other associations have reported that both the number of claims and size of awards have increased.

Question 4. What could the industry be doing that it's not doing to help solve the insurance problem?

Answer. The industry has organized regional safety programs in some parts of the country. More safety orientation programs could help in the education of crew on proper safety procedures. Improving safety, however, will not guarantee lower insurance premiums. Some of the most sophisticated and safety conscience fleets still experience rate increases and more unfavorable terms in their insurance policies.

Many people believe the insurance problem is related more to the structure of the current insurance liability and compensation system. The Council will be undertaking an intensive examination of the current insurance system as well as possible alternative compensation systems this summer.

The Council also intends to continue to work closely with the insurance industry. More effort should be focused on bringing the insurance and fishing industry closer together so that each industry has a better understanding of their respective needs and concerns.

Finally, there still exists a need to better understand and document the nature of casualties occurring at-sea. The Coast Guard data collection is limited by dollar amount or nature of the casualty. A better casualty data base could lead to the development of industry generated safety guidelines and provide for a better appreciation of the risks insurance companies are expected to cover.

Question 5. If the Congress concluded that some type of short safety and training course was needed for captains/mates/engineers and/or crew, are there sufficient monies within the fishing industry and existing government programs (Sea Grant, S-K, etc.) to fund the establishment of such a program, or would additional federal start-up monies be necessary?

Answer. As long as the Sea Grant and S-K programs continue to receive federal funding, and vessel safety and insurance are identified as priority funding areas, no additional federal start-up monies should be necessary.

Question 6. Ms. Vehrs with the Texas Shrimp Association will testify that foreign fishing fees (in the Fishery Loan Fund) should be used by the U.S. government to establish a reinsurance fund. Is this a good idea? Why, and to what extent would it solve the crisis?

Answer. The NCFVSI has not taken a position on the use of the Fishery Loan Fund to establish a reinsurance fund.

Question 7. Are Sea Grant and Saltonstall-Kennedy (S-K) Grant monies being channeled to improve safety? Is there sufficient direction and flexibility in the statutory language to direct these monies to safety programs?

What federal programs are there to improve vessel safety and lower operational costs? Which are voluntary and which are mandatory? Are they adequately funded? Are they effective?

Answer. The Sea Grant and S-K Grant monies are being channeled into programs to improve safety. The Council has received continuous support under the S-K program for various safety related projects since 1981, and this year vessel safety and insurance has been identified as a national and regional priority for S-K projects.

Under the Sea Grant Program, three fishing vessel safety centers have been established in the U.S. They are located in Rhode Island, Florida, and Washington and have focused on vessel stability issues. Sea Grant also sponsors an annual national conference on vessel safety. Many of the Marine Advisory Programs associated with the Sea Grant Program produce excellent safety training and educational tools including video tapes and manuals.

The Sea Grant and S-K programs are voluntary program focusing on vessel safety. No change in the statutory language of these programs is needed in terms of addressing the vessel safety and insurance issue. The Coast Guard also has produced regional safety documents and is in the process of developing a series of voluntary safety recommendations to be published as navigational aids. The Coast Guard also is funding together with the NMFS a "nationalized" safety manual.

Although the Council has received funding for various safety related projects, the level of funding has never been adequate to support any full-time coordinated effort to address safety and insurance issues on a national level. It seems that we duplicate each region's efforts by redeveloping manuals, safety programs or new insurance alternatives that already exist in other parts of the U.S. All of the programs, whether federally or privately sponsored, could be more effective if they were better coordinated with each other. Greater federal support is needed in this area.

The NCFVSI will provide the Committee with the results of its national questionnaire on vessel insurance and safety options and its research on the use of fishery management regulations to improve vessel safety as soon as these projects are completed.

We appreciate the opportunity to comment on this issue and will continue to work with the Committee as requested. Please contact us if we can be of further assistance.

Sincerely,

THOR J. LASSEN,
Executive Secretary.

Enclosure.[1]

Senator TRIBLE. Next we will hear from a panel. The panel is headed by William Wells, vice president of Wells Scallops, Seaford, VA.

Mr. Wells, we are proceeding under a 5-minute rule today, but I will waive that for you because you are speaking on behalf of this delegation. Take what time is necessary, and before you begin please introduce your colleagues for the record.

STATEMENT OF WILLIAM S. WELLS III, VICE PRESIDENT, WELLS SCALLOPS, SEAFORD, VA; ACCOMPANIED BY PHILLIP CAHILL, COMMERCIAL FISHERIES SPECIALIST AND INDUSTRY ADVISOR, VIRGINIA INSTITUTE OF MARINE SCIENCE; BOB O'SULLIVAN, VICE PRESIDENT, MARINE INSURANCE DIVISION, THE FLAGSHIP GROUP, LTD; V.J. O'NEAL, PRESIDENT, ST. AUGUSTINE SHIPBUILDING; AND CHARLES AMORY, OWNER, AMORY SEAFOOD

Mr. WELLS. Yes, sir; my name is William Wells. I am here speaking on behalf of fishing vessel operators in the coastal mid-Atlantic region, including North Carolina, Delaware, Maryland, New Jersey, and Virginia. I manage a family-owned fleet of scallop

[1] The enclosure was not reproducible and is in the Committee files.

trawlers out of Seaford, VA. I am fourth generation in the seafood business and as a seafood producer.

I am here today with my colleagues Phillip Cahill, industry advisor for the Virginia Institute of Marine Science; Robert O'Sullivan, vice president of the Flagship Group, Marine Insurance Department; Charles Amory, owner of Amory Seafood; and V.J. O'Neal, president of St. Augustine Shipbuilding, builder and owner of Seafood Trawlers.

Following my presentation of our problems and our suggested course of action to resolve them, these gentlemen and I will be available to provide additional information and to try to answer your questions.

Our specific objectives are to continue self-help programs which will help to reduce the cost of insurance and increase its availability; to continue working with Coast Guard representatives for the purpose of establishing safety standards for uninspected fishing vessels and safety guides for crew qualifications; to continue working with Coast Guard representatives for the purpose of developing inspection requirements for fishing vessel hulls, and equipment, and licensing requirements for crewmembers; and to remove commercial fishermen from the Jones Act.

Implementation of these objectives is a sizable task, and we need your assistance in accomplishing No. 4, to remove commercial fishermen from the Jones Act.

We recognize the necessity to provide for alternative remedies for injured fishermen if the Jones Act benefits are taken away. But to be perfectly frank, after 7 hours of meetings yesterday, we find that we do not have a viable alternative. But we do believe, Senator, and we would like to urge you to become a catalyst to cause the resources of the Department of Commerce and the National Marine Fisheries Service to be used to gather the data base necessary to recommend a suitable alternate benefit plan for injured fishermen. Then, after consulting with industry to see if your plan is viable within the industry, we would urge you to propose a bill.

Our problems are not new. They have been studied for more than 25 years. We have not succeeded in our attempts to resolve them by independent self-help initiatives. Now we have a crisis which is about to put us out of business. If we are not successful in trying to solve our problems this time, our country's involvement in the production of fish products surely will end.

We have had setbacks before such as the tremendous cuts in our profits after the world fuel crisis in 1973, and just recently exclusion of U.S. fishing vessels from Canadian fishing grounds. Foreign fishermen continue to have the advantage. However, the deathblow for our industry is coming from within. We are being priced out of business by the insurance industry.

We understand that their losses have gone sky high as a result of recordsetting jury awards and countless court cases brought by injured fishermen with artful attorneys under the Jones Act umbrella. We are told that the underwriting losses in the last 2 years were more than the total underwriting deficit for the previous 25 years.

Fishing vessel owners are becoming unable to meet debt obligations which include their $180 million in Government-guaranteed

loans. It is striking the crewmembers as well as the owners of fishing vessels. Over 4,000 fishing industry jobs in the Hampton Roads area alone may be lost. When vessels are tied up, there is no need for crews. Even the opportunists who recognize the potential for high Jones Act awards aboard American fishing vessels will be out of a job. We believe these fishermen would benefit from a compensation alternative to the Jones Act which would preserve the industry and provide reasonable maintenance, cure, and compensation benefits.

In addition to the economic impact on preservation of the industry, there are other reasons to remove commercial fishermen from the Jones Act.

The Jones Act was not enacted for the purpose of benefiting commercial fishermen. Fishermen are self-employed rather than wage earners. Their earnings are based on a share of the catch adjusted by the expenses of the trip. The courts, rather than the Congress, give fishermen status under the Jones Act because they do not qualify for coverage under most State workmen's compensation systems. Therefore, we recognize that removing fishermen from the Jones Act will require the establishment of an alternative remedy, a remedy that is both reasonable and acceptable to the courts.

In parallel with these congressional actions, we fishermen recognize the need for concessions, and we are willing to make them. We are in the process of improving fishing vessel standards and crew qualifications by helping to implement, and by supporting the enforcement of Coast Guard voluntary and regulatory programs. This can be done in phases to allow reasonable compliance by the industry. In return, underwriters must be required to adjust the costs of insurance downward as standards rise and compliance improves.

We agree that regulations must be enforced by a formal commission or by the Coast Guard through inspections and licensing; however, the regulations should not be the same as for Coast Guard-inspected vessels today. We believe they should be written by representatives of the Coast Guard, the insurance underwriters, and the fishing industry, all acting as a group. Any future changes can be made in the same manner with input from all the three groups.

In conclusion, we strongly urge the removal of commercial fishermen from the Jones Act. We support new legislation which would provide reasonable compensation for fishermen in the event of illness or injury and which would provide underwriters a reasonable means of predicting losses as they do now under workmen's comp.

And in the interim, we also support the use of arbitration procedures similar to those used under the Federal Longshoremen's and Harborworkers' Compensation Act to handle claims and controversies in the fishing industry with the authority to make final awards. We will continue working with the Coast Guard to improve safety standards and crew qualifications for fishing vessels and in conjunction with these efforts, we will continue the development of self-help programs to revive the industry.

This concludes our statement.

I would like to say that seated here, there is only one individual who is not a former fisherman. The people we are talking about getting injured have at one time been us, ourselves, working off-

shore. We operate independently without Federal regulation and with little Federal help, and we like it that way. That is the nature of our business. We do not want to be here in Washington asking for your help. But the problem that we face is so great, the crisis is so catastrophic that we cannot confront it or solve it on our own. We are talking about the majority of the offshore fishing industry going broke this year due to escalating insurance costs. We do not need financial help, we need a defined benefits program for injured fishermen.

Senator TRIBLE. Are there boats in the Chesapeake Bay area that are tied up today because they lack insurance?

Mr. WELLS. Our fleet was tied up for the entire month of December and the entire month of February for that reason. There are other boats that I am aware of that cannot get insurance in our area.

Senator TRIBLE. Would a responsible operator go to sea without P&I coverage?

Mr. WELLS. In my opinion he would not.

Senator TRIBLE. You suggest in your testimony that one of your objectives is to continue working with the Coast Guard representatives to develop inspection and licensing requirements.

Can you say with greater precision exactly what it is you mean by the term "inspection and licensing requirements," and how would you see that system structured so that it would be effective and yet reasonable?

Mr. WELLS. I believe Mr. Cahill can answer that question better than I.

Senator TRIBLE. That would be fine.

Mr. CAHILL. For the record, I am Phillip Cahill from the Virginia Institute of Marine Science, Sea Grant Program.

Senator TRIBLE. Mr. Cahill, pull the microphone a bit closer to you.

Gentlemen, I would invite any of you answer questions or add comments as you see fit.

Mr. CAHILL. I have been in the industry for 15 years, 12 years at sea, and we have at the Virginia Institute of Marine Science instituted a safety program that is hands on. I can see inspection being developed with a coalition of fishermen, insurance, Coast Guard, and institutions that you have, the University of Washington, the University of Rhode Island, Thor's group. I can see bringing them together to create what would be a reasonable standard. I feel it can be done. I think the industry can police themselves. Certainly the Coast Guard would be able to provide a guideline that would provide for a seaworthy situation.

Senator TRIBLE. Mr. Cahill, how would you envision this program being implemented? Would that be done by the Coast Guard, or by the fishery management councils or by other organizations?

Mr. CAHILL. I would say that the fishery management councils working with the Coast Guard and the development foundations, could create the proper mechanism for this to operate.

Senator TRIBLE. Now you have suggested that we should exempt the fishing industry from the Jones Act and replace it with the Workmen's Compensation Program. That is clearly in the interest

of the boatowner. For the record, how would this advantage the crewmember?

Mr. WELLS. I believe Mr. O'Neal has the answer to that question.

Mr. O'NEAL. Well, if we should go to the workmen's compensation, it would eliminate a lot of these lawsuits, I think. It would put a lot of crews to work. Some of the boats would be working that are not working now, or are not going to work, and it will benefit the whole industry.

Mr. WELLS. In addition, if I may add, a fishermen would know in the event of an injury exactly what he is going to receive, who is going to pay him, when he is going to get it. There would be a structure that is established that he could be confident of. That structure does not exist today, and he would not need to get an attorney to gain a settlement, and he would not have to wait 12, or 14, or 16 months to be compensated for his illness or injury.

Senator TRIBLE. Mr. Wells, have you talked to the trial lawyers about this proposition?

I suspect that we will hear from them.

Mr. WELLS. I expect that you shall.

Senator TRIBLE. How many American companies are offering P&I insurance today?

Mr. WELLS. Mr. O'Sullivan is with the Flagship Group and has the answer, I believe, to that question.

Senator TRIBLE. You have got me covered today, I must say.

Mr. O'SULLIVAN. At the present time I think there are five American underwriters that are presently writing P&I and hull insurance in the American fleet, for the American fleet.

Senator TRIBLE. If domestic insurance is not available, where does the fisherman turn?

Mr. O'SULLIVAN. Well, there are several alternatives. One, of course, is London; two, a self-insurance program; three, turn your boats over to the mortgage company.

Senator TRIBLE. The self-insurance and the foreign route, is that more expensive? How does that compare with domestic insurance, assuming its availability?

Mr. O'SULLIVAN. Our office does quite a bit of business with the underwriters at Lloyds. We have been over there within the past 3 months discussing this very issue. The consensus over there, there are two lead underwriters, and both of the underwriters have expressed absolutely no interest in writing primary P&I insurance. That is the first layer, first-dollar coverage. They would take coverage on an excess basis, if you had the first $300,000 or $500,000 placed in an American underwriter that had good security; by that, I mean were financially secure.

Senator TRIBLE. Mr. Cahill, going back to safety, does the Virginia Institute of Marine Science have a safety program today?

Mr. CAHILL. We just initiated a pilot program using Mr. Wells' vessels, and on this March 6 we had a demonstration of this. We had over 80 people attend that were fishermen or vessel owners, and we addressed firefighting. We provided a movie that we had done, or a film, on proper gear handling for safety. We have also initiated a mailing list for them disseminating information.

We worked in conjunction with the Coast Guard in Yorktown and in Elizabeth City where they provided a helicopter. We went

through various types of rescue at sea. We have different workshops that we structure whenever there is a problem, and we see ourselves getting more and more involved in this because we have jumped into the actual hands-on business.

Senator TRIBLE. Is this going to be an ongoing program, then, as you envision it?

Mr. CAHILL. Yes, sir.

Senator TRIBLE. Mr. Amory, do you have anything to add today? You have been uncommonly quiet, my friend.

Mr. AMORY. Yes, sir. I feel like the industry, the seafood industry with the insurance industry, and with the help from you and the National Marine Fisheries Service and hopefully the Department of Commerce, can develop some safety programs and regulations and inspection procedures that will be of considerable help and a giant step forward in eliminating a lot of the problems we have had.

Since the attorneys have elected to advertise for business in recent years, we find that we now have people, attorneys sending runners down to the docks every time the boats come in and want to know if anybody got hurt, mashed their finger or hurt their back or anything like that, and are actually printing brochures explaining to them what to say and how to go about coming to them with problems and so forth to collect large sums of money.

And the self-insurance programs and other programs we feel like we may be able to explore in the future, that hopefully would get us out from under the Jones Act and in doing so enable the insurance companies to be able to predict what their costs might be, will be a tremendous savings in premiums to the industry. And without some ceiling on the injuries, for example, a guy can break an arm in Hampton, VA, and get $5,000 for it; another guy break his arm in Gloucester, MA, and get a $50,000 or $75,000 settlement.

I do not believe a lot of the insurance companies that are left in it today, the four or five, they do not even know whether they have made or lost money from the business they did in 1981 because of court cases that have never been settled, and the unprecedented decisions and amounts that juries in this country today are awarding have basically created the problem that we have.

Senator TRIBLE. Well, I thank you for your testimony, gentlemen, and I thank you for your presence here today.

I have some additional questions, but I would rather just submit those to you for the record rather than prevail on you to stay longer today. But we have addressed a number of issues that impact on this question, and I thank you for your insight and your experience, and we will look forward to working with you in the days ahead.

Mr. WELLS. Thank you, Senator.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR STEVENS AND THE ANSWERS

Question. You state that one of your objectives is "to continue working with Coast Guard representatives to develop inspection and licensing requirements? Is this an endorsement of inspection and some type of education or training requirements?

Would any of you have supported this proposition five years ago? If not, what has changed your mind?

Answer. We are currently developing a training program for the offshore fishing industry at Virginia Institute of Marine Science. It will include segments dealing with first aid, fire fighting, and safety on deck (handling of gear). We endorse this type of training for all offshore fisheries. We feel training is more important than inspection of vessels. However, if inspection standards are reasonable and specifically designed for various industries with industry input, we feel this would improve the fishing industry. Few, if any, fishermen would have supported these ideas five years ago, because the insurance problem had not reached the catastrophic proportions of today.

Question. Can licensing of captains/mates/engineers and required safety training for the crew and inspection of vessels solve the problems of P&I rates and availability without any changes in the current litigation system?

Answer. No. The litigation issue and huge Jones Act awards are the major reason insurance underwriters are refusing to write U.S. Fishing Vessels.

Question. Should every crew member be required to take a safety curse, periodically, or is it sufficient to require this only for captains, mates and engineers?

Answer. We feel once every three years for crewmen would be sufficient.

Question. (O'Sullivan) Of the total increase in P&I rates during the past five years, roughly what percent is attributable to the following factors:

1. Increased medical expenses following closure of the Public Health Service hospitals.
2. A greater number of jury awards and settlements.
3. A larger recovery in each jury award of settlement.
4. The need for insurance companies to generate additional cash to make up for a lower rate of return on investments.
5. Other factors.

Answer. Medical expenses following closure of Public Health Service hospitals are responsible for approximately twenty percent of the increase in P&I rates. The need for insurance companies to generate more cash is approximately five percent. The majority, seventy five percent, of the increase in P&I rates is due to high jury awards which have scared insurance companies to settle out of court for inflated settlement amounts.

Question. (Cahill) Should successful completion of an annual safety course (or biannual) for all captains, mates, engineers, and/or crew be required? If there was sufficient funding available, does VIMS have the facilities and instructors to carry out such a program?

Answer. A program for crewmen every three years and safety course for captains, mates, and engineers every one or two years should be encouraged. Yes, with sufficient funding, VIMS has the facilities and instructors to carry out such a program.

Question. Has the insurance industry been creative in trying to hold down premium rates (e.g.: offering coverage with a higher deductible, offering catastrophic-only coverage, offering incentive rates for boats and crew which meet certain safety standards, offering premium rebates to operators with few or no claims, etc.) or do companies simply offer standard rates throughout a region and then get out when the costs are higher than expected? In other words, has the insurance industry gone the extra mile in attempting to alleviate the current crisis?

Answer. In general, they've covered everyone with the same brush. Those who remain are being more selective. Higher deductibles don't work under the Jones Act. The net result is that insurance companies find out about a potential loss later. Often too late.

Very few insurance companies have one-way retrospective rating programs because losses under the Jones Act preclude any possibility of that happening consistently. As a result of these conditions in the insurance market, the few companies who remain dictate the terms and conditions they're willing to live with.

Question. (O'Sullivan) Is the insurance industry selective about who it will cover, seeking out only the safest and most careful operators? Does part of the problem stem from companies not being selective enough?

Answer. The problem is in quantifying the risk. The few companies that are still writing U.S. fishing vessels are being much more scrutinizing.

Question. (O'Sullivan) Do insurance companies already have any type of inspection, licensing, or other required safety programs? How prevalent? Are they mandatory in order to get coverage? Has a correlation been demonstrated between fulfilling these requirements and a decrease in the size/number of claims?

Answer. No. Insurance companies require conditions and valuation surveys and the review the captains' and owners' loss record. In addition the agent who handles the account must be close to the risk in order to service the account.

There is no clear indication that licensing would solve the problem, but it seems logical that it would. It has helped in the auto industry.

Question. In some parts of the country (principally New England and Washington State) fishermen's associations purchase P&I insurance for members or self-insure, provide group medical coverage, and enforce safety restrictions. Would such an approach work in Virginia? Why or why not? Has it ever been tried?

Answer. No. These associations are only as strong as their ability to assess risk, pay claims, etc. If insurance companies who have been in the marine insurance business for fifty years cant survive, how can a group of boat owners with little or no insurance background? The New England fish association that we're aware of that has been successful is composed of family-owned inshore day boats. The risk due to the small size of these boats, the small number of crew, the lack of large machinery, and their inability to work in rough weather is not analogous to the offshore industries risk. The association in Washington State that we know of was formed by a group of Norwegian fishermen and implemented approximately fifty years ago. They remain viable due to investments they're built up with premiums for early half a century. In addition, to our knowledge, these associations are not open to new members.

Question. (O'Sullivan) The insurance industry is cyclical. When interest rates were higher a few years ago, insurance was easy and affordable because cash was flowing into the industry (from premiums and investors) and investment income could make up for losses on claims. Is the crisis we are seeing today partly a result of this cycle, or is the cause principally related to the nature of the fishing industry and/or the liability system? Explain.

Answer. The crisis we are seeing today is principally the results of the nature of the fishing industry and the liability system. The cycle of the insurance industry has been a factor. Rapid expansion of the industry through Title 11 financing and the increase of the Jones Act cases due to inexperienced crew and more crewmembers has had a greater effect.

Question. (Wells) You state that "underwriters must be required to adjust the cost of insurance downward as standards and compliance improve." Who would require the insurance industry to do this?

Answer. By changing the Jones Act as pertains to commercial fishermen, rates will come down due to competition. This is not happening now because insurance companies refuse to write U.S. fishing vessels because they cannot quantify their losses. Market forces will insure lower rates.

Senator TRIBLE. The next panel includes Henry Mitchell, representing the United Fishermen of Alaska; James P. Walsh, American Tuna Boat Association; and David Burney, U.S. Tuna Foundation.

STATEMENTS OF HENRY MITCHELL, UNITED FISHERMEN OF ALASKA; ACCOMPANIED BY DEMING COWLES; JAMES P. WALSH, WASHINGTON COUNSEL, AMERICAN TUNA BOAT ASSOCIATION; AND DAVID BURNEY, COUNSEL, U.S. TUNA FOUNDATION

Mr. MITCHELL. Mr. Chairman, my name is Henry Mitchell with United Fishermen of Alaska.

To my right is Mr. Deming Cowles who works for the United Fishermen of Alaska. The United Fishermen of Alaska is a fishermen's association incorporated in the State of Alaska and represents approximately 20 various fishing organizations, ultimately representing over 8,000 fishermen.

We range in size from 25-foot skiffs to individuals with large trawlers. Our concern is with hull insurance basically. We are having a heck of a time obtaining hull coverage in Alaska at the present time in all classes of vessels. We feel very strongly that much of this has happened due to circumstances that resulted

when one insurance company came into the market very aggressively a number of years ago, reduced premiums, thereby obtaining most of the clientele. When that company suffered massive losses for the sinking of approximately 12 large crabbers in the Bering Sea, they basically got out.

Other underwriters have been very reluctant to come back into that market. Many of the crab boats, many of the trawlers are absolutely unable to obtain coverage which they could afford to fish, especially with crab stocks down and the low prices being paid for bottom fish in the Bering Sea North Pacific. The smaller vessels in Alaska, some of the salmon seine fleets, they are having a difficult time obtaining coverage at reasonable rates.

We would look forward to trying to work with your staff and give you information on our needs.

Mr. Cowles here would like to say a few words about some of our recommendations.

Senator TRIBLE. That would be fine.

Mr. COWLES. Thank you, Mr. Chairman.

Overall, in addressing the options we see available, UFA believes that there will not be a satisfactory and prompt resolution of the current insurance crisis without a better method of distinguishing between good and bad insurance risks. That will entail some substantial analysis of the demographic characteristics of the fishing fleets. Once accomplished, underwriters will be better able to provide insurance in Alaska and other fishing areas faced with substantial insurance problems.

We would support Government funding of any study efforts in this area so that the essential starting point is today. But there are several other options that are available. For example, organizing insurance pools. We are able to do that under Alaska law, and that may be possible in other jurisdictions. One difficulty with that, of course, is that it is a relatively conservative option that seems to skim the better risks, leaving the poorer risks still at risk and still without insurance.

The third option is the establishment of a public corporation either at the State or national level to write marine insurance. We have taken that approach in Alaska with regard to medical indemnity insurance, to provide medical malpractice insurance, and that might be a model that we would want to take a further look at. Improving safety is a very important part of it, as has been testified to by others.

Industry efforts have been under way to increase fishermen education on the importance of vessel safety. More can be done in the way of analyzing the causes of accidents in order to improve safety records. We believe that management changes are an additional option.

The approach of the National Council for Fishing Vessel Safety and Insurance in its recent study on the safety impact of fish management policies might be adopted at the State level to focus on more localized problems as well.

Management changes in such areas as timing of openings and closings to coincide with weather conditions should be explored in order to lessen the time and load pressures on fishermen, and further analysis of the merits of instituting liability limitations or es-

tablishing a type of a workmen's comp program in order to resolve protection and indemnity insurance problems is also in order.

Those are some of the ideas that we have had and we have started to study ourselves.

As Mr. Mitchell has said, we will be more than happy to work with the committee as you explore further efforts to resolve it.

Thank you.

[The statement follows:]

STATEMENT OF THE UNITED FISHERMEN OF ALASKA

Mr. Chairman, I am Henry Mitchell, Executive Director of the Bering Sea Fishermen's Association (Anchorage) and Treasurer of the United Fishermen of Alaska (UFA). Today I am representing UFA before this Subcommittee to address our concern about marine insurance for fishing vessels.

UFA is the largest association of commercial fishermen in the United States, representing fishermen in all gear groups, in all geographic areas of Alaska, as well as marketing and aquaculture groups in Alaska. UFA is a non-profit organization that has been active on specific national fishing legislation and has recently expanded its efforts at the national level to increase public awareness of the importance of commercial fishing to the nation. UFA's main offices are at Suite 10, 319 Seward Street, Juneau, Alaska 99801-1188.

As you are aware, all the fisheries nationwide appear to be experiencing substantial increases in marine insurance premiums, or the total lack of availability of marine insurance for some types of vessels. The greatest problem in Alaska centers around the availability of affordable hull and protection and indemnity insurance in the Bering Sea and Aleutian crab fleet. However, substantial problems exist as well for our trawl and diversified seine vessels with regard to hull insurance. UFA is currently attempting to obtain support for an analysis of the causes of the problems in Alaska so that we may advice our state legislature, the Congress, and the underwriters of marine insurance of what steps need to be taken to correct the situation. In a nutshell, many vessels in our fleet will be unable to leave the docks this year because insurance is unavailable or prohibitively expensive. Many other vessels in our fleets will have substantial increases in premiums.

BACKGROUND

Five years ago in Alaska there were several surplus carriers underwriting marine insurance for the Alaska crab fleet at a premium rate of some 7 to 8 percent of the insured value. High value crab boats flooded the market in 1981, and one carrier reduced its premium rates to 1.5 to 4 percent of value, depending on the vessel and operation, in an effort to expand its share of the market. Unable or unwilling to compete, other carriers pulled out of Alaska. In the 1982-83 seasons, at least twelve big crabbers sank, constituting a loss rate of one vessel out of every seven in the fleet. With losses of $34,000,000 and collected premiums of only $3,500,000, the remaining carrier pulled out of marine coverage in Alaska, cancelling many policies on 30 days notice. Other carriers, having already abandoned the Alaska market because of the reduction in premiums, were reluctant to begin writing policies again because of the staggering losses of the 1982-83 seasons.

During the 1983-84 seasons, the Bering Sea and Aleutian crab fleet were hit the hardest. Many of the vessels simply never left the harbor because of lack of insurance. The problem is not simply with crabbers—large trawlers fishing the Aleutians and Bering Sea have also experienced great difficulty securing adequate insurance. Smaller crabbers fishing inside waters can obtain insurance but at grossly increased rates. For example, premiums on a Southeast Alaskan seiner/crabber valued at $575,000 skyrocketed from $18,000 in 1983 to $43,000 in 1984.

Hence, if our members are able to obtain insurance they are forced to work harder, sometimes in dangerous weather conditions, simply in order to meet the higher insurance premiums. That, of course, increases their risks. On the other hand, if they are unable to obtain insurance at all, they are forced to tie up at the dock or "self-insure," with the resultant risk of losing all.

CAUSES

The primary cause of insurance problems for crabbers in Alaska statewide is related directly to the king crab fishery. Multi-million dollar vessels were built in re-

sponse to excellent king crab harvests in the late seventies. Harvests in 1982-83 and 1983-84 seasons have been greatly decreased, resulting in a greatly-reduced season. That made it very difficult for big crabbers to meet large mortgage and operating expenses. Many factors have led to greater risk taking: (1) greater pressure to increase the time fishing, regardless of weather; (2) inexperience of skippers and crew who enter the fishery to replace more experienced operators (who have stopped fishing because of decreased returns on their investment); (3) decrease in maintenance to reduce operating costs; (4) alterations of vessel stability due to conversion of crabbers to other fisheries; and (5) decrease in market value of the vessels themselves due to decrease of returns from the fishery. High losses have also triggered an increased concern for safety.

OPTIONS

Overall, in addressing options, UFA believes that there will not be a satisfactory and prompt resolution of this current insurance crisis without a better method of distinguishing between good and bad insurance risks. That will entail some substantial analysis of the demographic characteristics of the fishing fleets. Once accomplished, underwriters will be better able to provide insurance in Alaska and other fishery areas faced with substantial insurance problems. Government should fund study efforts in this area as the bare essential starting point.

Several other options come to mind as we seek to resolve the major insurance problems for our industry.

1. Market as a solution. Many economists have suggested that the market will take care of the problem in time. A number of crabbers will have to leave the market before the remaining ones are able to make the fishery economic. Rates in excess of 14 percent of value will drive out all but a few.

2. Organizing insurance pools. Under certain circumstances under Alaska law, insurance pools can be formed. Pools can require substantial amounts of capital. As well, by their nature, pools would initially be conservative in which risks they would accept. They may also make markets less attractive to carriers, by taking the good risks for coverage by pools and leaving the greater risks to the carriers.

3. Establish a public corporation, at the state or national level, to write marine insurance. An example of this approach in Alaska is a public entity (the Medical Indemnity Corporation of Alaska) created to provide medical malpractice insurance.

4. Improve safety. If losses are reduced, the market will become more attractive to underwriters, who would resume writing policies or reducing premiums. Industry efforts have been underway to increase education of fishermen on the importance of vessel safety. More can be done in the way of analyzing the causes of accidents, in order to improve safety records.

5. Management Changes. The approach of the National Council for Fishing Vessel Safety and Insurance in its study on the safety impact of fish management policies might be adopted at the state level to focus on more localized problems. Management changes in such areas as timing of openings and closing to coincide with weather conditions should be explored in order to lessen the time and load pressures on fishermen.

6. Further analysis of the merits of instituting liability limitations or establishing a type of workers' compensation program in order to resolve protection and indemnity insurance problems. That could require amending the Jones Act.

UFA appreciates this opportunity to discuss the insurance problems our industry is facing in Alaska. It is part of a national problem which we must all take the first steps towards resolving. UFA will assist the Subcommittee as it further explores this issue, and respectfully suggests that as a first step it allow industry to work with Congress in designing prompt analysis and recommendations for action.

UFA looks forward to working with the Subcommittee towards satisfactory resolution of this most serious problem.

Senator TRIBLE. Thank you, gentlemen.

Mr. Walsh.

Mr. WALSH. Thank you, Mr. Chairman. It is a pleasure to be here to testify before you on behalf of the American Tuna-boat Association.

As you probably know, Senator, the American fishing industry is made up of a number of diverse fishing groups from around the country participating in a number of different fisheries with a

number of different types of vessels with a number of different objectives.

The tuna fleet that I represent previously was based in San Diego, CA, but because of circumstances related to cheaply priced imports of canned tuna in water from overseas, our canneries in southern California have closed, but we still deliver fish to canneries in Puerto Rico and American Samoa.

Although our fleet is declining, Mr. Chairman, our boat owners are still struggling to keep in business. One of the problems that has hit them rather hard lately is that, as the price goes down and as they have tried to reduce their costs, insurance costs have gone up. We are still in the process of preliminarily investigating the magnitude of the cost releases over the last several years. And we continuing to work closely with the House of Representatives Merchant Marines Committee in their Congressional Research Service report. But we thought we would give you some preliminary information about the magnitude of the problem facing our industry.

We calculate that insurance costs for P&I, which is our principal problem, have gone up since 1982 at about a rate of 350 percent. That is more or less a guess. Some people have had higher costs, some people have lower.

If you will turn to the sixth page of my testimony, we have put together for you some idea of what has happened to the costs to the individual boat owner for P&I coverage. It starts in a nice year, 1965, at about $270 per man year. It jumps to $3,000 in 1980, and this year—1985—it is estimated that the cost per person on a tuna boat per year will be between $12,500 and $15,500 for a 20 person crew.

As you can see, at the same time the level of the deductible has gone up accordingly. As a result, a tuna boat is paying an enormous amount of money simply for P&I coverage. At a time when prices for the fish have gone down 30, 40, or 50 percent, to have to pay these kinds of increases puts a cost to the boat owner that will likely tip the balance against economic viability.

This problem has not totally now, but when prices are better, obviously the urgency was not quite the same. For our fleet it is absolutely essential that this problem be brought under control as quickly as possible.

We have no position with regard to what system should be established at this point. We think an alternative must be investigated, and we wish to participate with everyone else in trying to look at such. We feel also we have one of the safest fleets in the world. We have a very strong self-enforcement program in terms of how the vessels are built and how they are operated. Our vessels try to avoid having an injury several thousand miles from home that has to be attended to. That is an enormously expensive operation, therefore safety is probably one of the top priorities in the fleet.

So we do not necessarily agree with those who are suggesting that there should be a mandatory Government inspection program for safety. We feel our fleet, on a voluntary basis, is addressing that problem. More can be done always, but we are not necessarily convinced that the inspection by the Coast Guard will make the vessels safer.

Mr. Chairman, that very quickly summarizes my testimony. Thank you.

[The statement follows:]

STATEMENT OF JAMES P. WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Washington Counsel to the American Tunaboat Association ("ATA"). The ATA is a non-profit fishery cooperative based in San Diego, California which represents nearly all U.S. flag long-distance tuna fishing vessels. The U.S. tuna fleet is made up of large purse seine vessels, averaging about 1,000 tons in size, which catch skipjack and yellowfin tuna, principally in the Eastern Tropical and Central and Western Pacific Ocean.

On behalf of ATA, I would like to thank you for inviting me to testify today at this hearing to investigate the marine insurance problems facing the U.S. fishing industry. The subject of marine insurance has become of increasing concern to all sectors of the U.S. fishing industry because of the rapid growth in insurance premiums and mounting insurance losses. These added expenses couldn't have come at a worse time. The U.S. tuna fleet is facing a life-threatening cost/price squeeze due to a virtual flood of cheaply priced imports of canned tuna in water from canneries located in Thailand, the Philippines, Taiwan and other Far Eastern countries. Our fish prices have dropped dramatically, as much as 40 to 50 percent. Even though we have worked strenously to reduce our costs accordingly, a large percentage of our fleet now faces bankruptcy. As our boat owners were struggling with these unprecedented economic conditions, insurance costs have gone up almost 350 percent. Therefore, Mr. Chairman, we welcome these hearings. We hope they will lead to an indepth investigation by this Committee into the marine insurance problems facing the fishing industry.

Long-established principles of admiralty law treat a crewmen on a U.S. vessel as a virtual ward of the admiralty court; a U.S. vessel is liable in rem for all injuries to a seaman on an almost no-fault basis. This system of legal rules was meant to encourage entry into the merchant marine. However, as with any system, a balance must be struck. If the cost of this system becomes too high, however well-meaning, the balance could tip against the economic viability of fishing enterprises. And without economically viable fishing vessels, seamen won't get jobs.

As we see it today, the balance is disappearing. Unless balance can be brought back into the maritime liability/insurance system, many tuna vessels may simply not be able to continue in business.

I am sure that your Committee is aware that the House Merchant Marine and Fisheries Committee has requested that Library of Congress undertake a thorough study of marine insurance as it affects the U.S. fishing industry. We strongly support this effort and the plans of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment to conduct a nationwide series of hearings to delve into this question in depth. Until those studies are completed, it would be premature to make any policy recommendations. Today, I thought I would offer some background information for the Committee.

In 1973, with the assistance of the National Marine and Fisheries Service, a conference was held here in Washington, D.C. on commercial fishing vessel insurance. The purpose of the conference was to discuss many of the same issues of such great trouble to the industry today. The conference was well attended and produced some very useful information. Out of this meeting came the notion that legislation should be developed to reduce the cost of marine insurance and corporation costs while at the same time implementing voluntary vessel safety inspection. Legislation was then developed which would have established a workmen's compensation type of system, with fixed amounts for certain injuries and which also called for implementation of a safety program for vessels that wished to participate. The legislation was a delicate compromise that promptly fell apart when the legislation was introduced in the Congress. Mr. August Felando, the President of the American Tunaboat Association, participated intimately in both the conference and the development of the legislation.

After the legislation failed, the fishing industry formed a group now known as the National Council for Fishing Safety and Insurance to continue a focus on insurance-related questions. The Council has attempted to compile a base of information as to the type of injuries and losses on fishing vessels to see if some pattern could be discerned that could be eliminated by safety measures undertaken voluntarily. The Council has worked on this problem for the last several years. Last year the Council

held a conference on this subject, which initiated the present dialogue over the marine insurance problem.

The history of dealing with this problem, however, has shown it to be extremely complicated and difficult. Not only is the fishing industry diverse and complex, but so is the marine insurance industry. Added to this fact is the complexity of our long-established admiralty system of legal remedies, which seems difficult if not impossible to change in any major way.

It is fair to say that all of the fishing industry now believes we must seriously examine possible alternatives to the current maritime liability/insurance system. There seems to be at least two options: one, maintain the present system but establish more rigorous standards for compensation of injuries and, two, examine the possibility of a workmen's compensation type of system that would be simpler and cheaper but still fairly compensate the injured seaman. Another possibility is to look at the Longshore and Harbor Worker's Compensation Act as an alternative, although many people feel that that Act is equally complicated and just as expensive as the present Jones Act and admiralty remedies. However, all possible alternatives should be examined in depth.

We do not want you to get the impression that our industry is not concerned about safety aboard our vessels. As a matter of fact, the U.S. tuna industry has been one of the pioneers in establishing a very sophisticated at-sea medical treatment system for those injured on tuna vessels. However, the cost of P&I (Protection and Indemnity) insurance has skyrocketed so much, it threatens to tip the precarious financial balance of our troubled fleet. The following statistics should give you some idea of the rapid increase of our P&I insurance cost:

Year	Average cost per man per year	Average crew size	Deductible
1965	$270 to $411	14	$100.
1970	$440 to 740	16	100 to $200.
1975	$1,800	18	1,000.
1982	$3,000	20	1,000 to $2,500.
1984	$4,400 to $10,000	20	5,000 to $10,000.
1985	$12,500 to $15,500	20	10,000 to $12,000.

This does not reflect costs that are incurred when an insurance company cannot pay and the vessel owner must.

In summary, the system appears to us to be out of balance. Sometimes the smallest of injuries can result in enormous jury awards or insurance settlement payments. Those who are truly seriously injured should be adequately compensated but the present system is greatly susceptible to abuse at any number of levels. The bottom line is simple: if we cannot afford insurance, then lenders will not advance us monies to operate our business.

We hope this Committee will do whatever that it can to address and resolve the problems we face.

Thank you for your attention.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR STEVENS AND THE ANSWERS

Question. You stated that one option would be to establish more vigorous standards for compensation of injuries. What are your thoughts on how this might be done?

Answer. One approach could be to maintain the existing basis of liability (unseaworthiness and negligence) and establish individual statutory limits on particular injuries which would serve as the benchmark for jury or insurance awards. This would be one approach to the problem of widely varying compensation awards for similar injuries.

Question. Would you favor more vigorous Coast Guard regulation of safety if it would result in lower insurance premiums?

Answer. No. First, we do not believe that the U.S. tuna fleet needs vigorous Coast Guard regulation to improve the safety of our fishing activities. Coast Guard regulations also result in costs to comply with those regulations as well as costs in enforcement. These costs may only marginally result in added safety. Secondly, we do not

believe that a Coast Guard certificate of safety will, in fact, lower insurance premiums. Insurance premiums are a function of the investment market and the recent history of losses in the activity insured. We do not see a direct relationship between Coast Guard regulation and insurance premiums. Therefore, we would not support increased Coast Guard regulation of our fleet.

Question. According to the Coast Guard, the casualty death rate for fishermen is 7 times the national average for all industry groups. In addition, vessel loss rates are approximately 5 times that of U.S. ocean-going cargo ships. Wouldn't you expect casualty rates to remain high as long as there are casualties of this magnitude?

Answer. Insurance rates for fishing vessels is perhaps more a function of innumerable small claims as it is for major (i.e. death) claims. As long as minor injuries result in high payment because of the legal system governing liability, insurance rates will be high. Although the death rate relative to other industries is high, that may not be true of certain sectors of the fishing industry, such as tuna. We certainly have no objection for paying an appropriate amount to compensate for serious injuries. But we do object to paying inflated claims for many lesser injuries.

Question. You mentioned that the insurance industry must distinguish between good and bad risks. Will some type of an inspection and education of licensing or licensing programs facilitate this distinction?

Answer. We don't believe that a government inspection and licensing program would necessarily facilitate the distinction between good and bad risks. The insurance companies themselves have not always been good regulators. But we are not convinced that reliance on Coast Guard inspection will ensure that a particular boat or company will be a good or bad risk.

Senator TRIBLE. Thank you, Mr. Walsh, you have certainly underscored the magnitude of the problem.

Mr. Burney.

Mr. BURNEY. Thank you, Mr. Chairman. Maybe I can underscore the magnitude in a little different light but come to the same bottom line.

As my testimony points out, we took a sample of 18 boats between 1980 and 1984 to get some idea of why premiums for P&I insurance have jumped dramatically. As can be seen, in 1980 we had P&I premiums as low as $9,100; in 1985 they are averaging over $200,000 per vessel, and in some instances they have exceeded $350,000. When you get up to that level, it becomes prohibitive.

I have attached to my testimony a chart which reflects the comparison of P&I insurance costs for our fleet with its main competitors of Korea, Taiwan, France and Japan. You can see how this places our fleet at a very serious competitive disadvantage.

I would like to digress from my testimony for just a minute and wear another hat. For a period of about 10 years prior to coming to Washington, DC, I represented P&I underwriters in both London and Canada. It is on that experience that I would like to base my oral remarks.

It became very evident to me as I litigated these cases, and again, being on the defense side I may be somewhat biased, but the award, the settlements that are dictated by the way the coverage is structured between primary carriers and excess carriers creates one of the major problems before us today.

The coverage structure forces settlement in most of these cases. First of all the cases drag out for a period of anywhere from 2 to 5 years before they get to court. In many instances carriers are out of business by the time the case gets to trial. They have little interest in risking a major award being handed down by a court. In addition you have excess carriers that are saying if you can settle the case within the primary limits, you should settle. Their only concern in the possibility of a jury award getting into excess coverage.

All in all, this dictates unnecessary high awards and long time delays.

The adversarial aspect of the cases creates an atmosphere of distrust among crew members they are being asked in many cases to testify against another crew member.

These are the things that must be eliminated if we are going to get awards down to a fair and reasonable level.

I also represent crew members. They are members of U.S. Tuna Foundation. We have processors, boat owners, and crew members. I want to stress the fact that any alternative compensation system must be fair and equitable. There are legitimate injuries that occur onboard fishing vessels, and these people certainly should be adequately compensated.

I would point out that our internal study reflects that a great majority of the accidents onboard tuna vessels are slip and fall cases. You cannot eliminate this type of case through some form of inspection program. These vessels operate in the middle of the ocean. You have fish coming on board the vessel and you are going to have slip and fall cases. If there is a legitimate injury, there should be adequate compensation in these cases.

We should focus some attention on why the awards are so large? What has caused this? What can we do to make them more fair and equitable?

It will be impossible to structure an inspection scheme that is going to be foolproof. It can't be done because of the nature of the business we are involved in. If some form of inspection will help eliminate a high percentage of the accidents, certainly it should be implemented.

I would suggest that it is important to involve the P&I underwriters in any proposed inspection scheme. If they are not satisfied, the premiums are not going to come down.

Our primary objective must be to bring the premium rates down.

Thank you.

[The statement follows:]

STATEMENT OF DAVID G. BURNEY

Mr. Chairman, on behalf of the United States Tuna Foundation, I want to express appreciation for the opportunity to testify here today on what we consider to be a serious problem facing the U.S. fishing industry.

For your information, the United States Tuna Foundation is a non-profit trade association consisting of U.S. tuna vessel owners and operators, U.S. tuna processors, and U.S. crew members organized for the purpose of preserving a U.S. tuna industry.

The extraordinary rise in costs of fishing vessel insurance, particularly the cost of protection and in demnity (P&I) coverage threatens the future of all independent U.S. vessel owners.

To put the cost of fishing vessel insurance in perspective, we have compared the P&I premium rates for U.S. tuna vessels from 1980 to the present. In 1980, P&I permiums for U.S. tuna vessels were as low as $9,100.00 per vessel while in 1985, the average premium is substantially above $200,000.00 and runs as high as $350,000.00 per vessel. This dramatic increase in premium costs reflects the generous to exorbitant financial awards given to claimants as a result of liberally interpreted proof and damage standards contained in existing maritime laws.

Along with the steady rise in insurance premiums, there has been a abrupt decline in the number of U.S. insurance companies participating in the commercial fishing vessel insurance market. Currently there are few companies providing this service on a meaningful scale. Obviously, the premiums are still not high enough to attract domestic carriers.

The escalating costs of marine insurance have further limited efforts by our tuna fishing vessels to compete with foreign tuna vessels that are unencumbered with P&I concerns. We are not suggesting that the U.S. close its courts to legitimate P&I claimants but we do believe that existing maritime laws should be reviewed and amended to ensure fairness.

Although U.S. tuna vessels are the most modern and technically advanced fishing vessels in the world, they must compete with heavily subsidized foreign fleets that enjoy low labor rates and little, if any, government regulation. In addition, the economic burden of paying upwards of $300,000.00 for P&I insurance protection when foreign competitors pay little or nothing for such coverage places the U.S. operator at a distinct competitive disadvantage.

To highlight the competitive disadvantage experienced by U.S. tuna vessels, I have attached an exhibit depicting comparisons of some principal cost elements of tuna vessels operated by the United States, Korea, Taiwan, France and Japan. You will note the U.S. fleet is paying insurance premiums far in excess of its foreign competitors. U.S. insurance rates range from 271% higher than the Koreans to 392% higher than the Japanese.

In order to end the spiralling P&I insurance rate increases an effort must be undertaken to eliminate the judicial excesses that are permited to take place under current maritime laws. We are not advocating denial of a claimants' right to be fairly compensated if it is found that a legitimate injury exists and the vessel owner or operator is at fault. However, awards should be fair, not excessive and should be based on a finding of fault, not some form of absolute liability.

We intend to work with other fishing interests in this country and members of Congress toward the establishment of a fair and equitable maritime injury compensation scheme.

We hope that this committee will continue to oversee this effort.

In supporting the need to review existing maritime laws and make changes where necessary, we are fully cognizant that bringing insurance costs down to a more reasonable level is not the panacea for all of our industrys' economic woes. However, sizable reductions in insurance premiums could make the difference between a U.S. tuna vessel remaining competitive or being forced to leave the fishery.

Let me again express our appreciation for the opportunity to discuss this important subject with you.

Thank you.

COMPARISON OF SOME PRINCIPAL COST ELEMENTS OF A VESSEL OPERATION

	Crew (ton)	Repair and maintenance (yr.)	Interest on L/T debt (percent)	Insurance (yr.)
United States	$200	$200,000	13.5	$350,000
Korea	109	100,000	5.0	95,000
Taiwan	55	70,000	N/A	N/A
France	168	164,000	6.5	80,000
Japan	150	200,000	8.5	71,000

Comparing the U.S. Fleet to its foreign competitors, we see:

U.S. crew costs are higher than that of any of the other fleets mentioned.

The U.S. Fleet when undergoing repairs in an American port experiences a substantially higher repair and maintenance cost than that experienced by its foreign competition.

The U.S. Fleet is also at a disadvantage in relation to the interest rates, principally for mortgage loans which are typically subsidized in foreign countries.

Notably, for our discussion, the U.S. Fleet is paying insurance premiums far in excess of its foreign competitors; 271% higher than the Koreans; 311% higher than the French; and 392% higher than the Japanese.

Senator TRIBLE. You have underscored some of the problems inherent in the present legal system. Do you have any suggestions as to how that system can be changed to operate more effectively and fairly?

Mr. BURNEY. One of the concerns I have always had as a trial lawyer defending these cases is the unseaworthiness aspect of the

Jones Act. You go in with one foot behind you. You actually do not argue liability. So regardless of the case, it is like the strict liability. You are in there. It is like no-fault. So what you are really talking about is dollars.

The longer a case takes to get before a court, the more that you have to pay—all of the lost wages that accumulate, and care and maintenance. So these are things that we have to have a timetable that allows you to get to the issue and satisfy these claims much earlier. I think also the burden of proof, the unseaworthiness aspect of the Jones Act, this should be investigated. Faults should be proven. If there is contributory negligence, it should be applicable in these cases.

There is no reason in my estimation to treat somebody onboard a vessel any differently than you treat someone that may be walking through a shopping center. I think this is never—I think we always get right up to the threshold of saying we have to look at this, we have to investigate it and maybe make some changes, and then we seem to move on beyond that and say what can the boat do to make it more safe.

I know in our industry we have done everything. We have a very, very strict safety program inside the tuna industry, and we also have an inspection program that I think others have alluded to that is way beyond what are minimum standards. So I think we ought to be looking in that area.

Senator TRIBLE. You have heard some fishermen from the east coast suggest that there ought to be a fundamental change in the legal recovery system, and we ought to substitute a Workmen's Compensation Program. How do you view that, representing a dual constituency as you do?

Mr. BURNEY. I support it. Again, I think it has to be fair and equitable. I think crew members that know that they are going to be fairly compensated for injury in a timely fashion would support that.

Senator TRIBLE. All right, gentlemen. Thank you for being here today.

The next panel includes Robert Jones, executive director of the Southeastern Fisheries, Inc.; Kristine Vehrs, Washington representative of the Texas Shrimp Association; and Charles Lyles, executive secretary of the Louisiana Shrimp Association.

Gentlmen and lady, you are most welcome. Please testify in any order you desire.

STATEMENTS OF ROBERT P. JONES, EXECUTIVE DIRECTOR, SOUTHEASTERN FISHERIES, ACCOMPANIED BY ELDON GREENBERG, GENERAL COUNSEL; KRISTIN VEHRS, WASHINGTON REPRESENTATIVE, TEXAS SHRIMP ASSOCIATION

Mr. JONES. Thank you, Senator Trible.

My name is Bob Jones. I have with me today our general counsel, Eldon Greenberg, seated on my right, who can answer any of the hard questions you may have later on in the hearing.

Senator TRIBLE. It is always useful to have someone like that at your side. I try to have several at all times, Mr. Jones.

Mr. JONES. I will summarize the statement and try not to be redundant to anything that has already been stated today.

I think it can be said that the insurance problems in the Southeast primarily relate to cost and to the availability of P&I. We found through an informal survey that our boat members, while still able to get insurance, almost universally have experienced substantial cost increase over the past 3 years. And we view the prognosis for P&I in the gulf and south Atlantic areas as not being very good because the availability is decreasing, as has been stated, down to five companies at this particular time, and as has been noted, the costs are going up significantly in all ports in all areas. And for two major reasons we see this situation as not likely to change very soon.

First of all, fishing is not a hazard-free occupation. As the tuna industry pointed out, it is hard to operate on a vessel at sea with fish or shrimp or whatever may be on the deck without having some accidents.

Second, the current liability law is generous to injured crew members, and there is no limitation of liability of P&I claims on the boat owner.

We think that if the current trends continue, there is no question in my mind that we will soon have an insurance crisis on our hands if we do not have it now. Either we will have vessel owners who operate with P&I coverage at substantially reduced profit levels, perhaps threatening the viability of their business, or we will have vessel owners who operate without P&I insurance; and I think this situation is unacceptable.

Our association has been trying to address the insurance problem in the following manner. First of all, we established an insurance section and brought in all the insurance experts in our association to sit down to see if we could not figure out some viable alternatives to the current situation.

Second, we are in the process of taking a well-established safety program from the Sahlman Sea Foods in Tampa and developing this system so we can transfer the program to the rest of our members. They have a proven safety program, and we want to use it.

Third, we have come to realize that it is important to help the members of the industry who are willing to participate in a safety program and work toward the reduction of claims and not those who are not willing to make a commitment to safety. In short, we do not want the good operators to pay for the sins of the bad operators.

Fourth, we are taking proposals from any and all of the insurance members of SFA for new and innovative programs. I would like to mention one legislative proposal. It is just an idea. It is just a straw man. It has problems as I think all new ideas might. But this is one we have come up with, and it is geared to solving the problem of P&I in the Gulf and South Atlantic area.

We would like to see a $10 million fund established from the fishermen's loan fund. This would be used to establish a reinsurance pool for the fishing industry. This reinsurance pool would take the place of any other reinsurance pool in effect for the domestic fishing fleet, and domestic insurance companies would be able to write policies using the pool subject to certain restrictions.

Only vessels meeting certain minimum safety standards would be eligible. The safety standards we are talking about are standards that could be developed by the companies and by the industry itself with the help of the Coast Guard. It would be short of a mandatory governmental inspection program, but it would be a program that could be monitored, possibly by the insurance companies themselves, on an annual or semiannual basis.

We think that besides those vessels being the only one eligible for participation in the reinsurance pool that only the vessels that had an ongoing safety program for the crew members would be eligible. We think safety is something that is going to have to be in everyone's mind all the time, and it is that way in most instances now, but we think it can be improved.

We would have rules that would say that any participant that was in this program that submitted a false claim or otherwise engaged in any kind of false claims under the program would be removed. We would also like to see established some type of arbitration board or peer review committee that would look at the claims that are submitted from time to time to make sure that they are legitimate claims. We think this is an idea that deserves exploration. We think that it would be one way to solve the problems that we have at this particular time.

Thank you for your time, Senator. We would like to leave you with just the thought that whatever program is developed has to be fair to the crew members, it has to have availability of insurance for the boat owners, and it has to be some sort of predictability for the insurance companies. I think if we have a program like that, we will be all right.

Thank you, sir.

[The statement follows:]

STATEMENT OF ROBERT P. JONES, EXECUTIVE DIRECTOR, SOUTHEASTERN FISHERIES ASSOCIATION, INC.

Good afternoon.

My name is Robert P. Jones, and I am Executive Director of Southeastern Fisheries Association, Inc. ("SFA"). I am pleased to appear before the Committee today to present SFA's views concerning the current liability and insurance problems which beset the fishing industry.

SFA, which is headquartered in Tallahassee, Florida is the largest commercial fisheries trade association in the Southeastern United States. It has more than 400 members from all sectors of the commercial fishing industry—harvesting, processing and marketing—from North Carolina to Texas. Many of SFA's members are vessel owners, and, as an association, we have become increasingly concerned about the insurance problem, especially the cost and availability of protection and indemnity ("P&I") insurance.

SFA is delighted that this Committee is taking an interest in this subject, and we would particularly like to thank the Chairman for taking the initiative in convening today's hearing. The time is right, in our judgment, to examine the fishing industry's liability and insurance problems.

In my testimony this afternoon, I wish to focus on three issues. First, I will describe the nature of the problem as we see it in the Gulf and South Atlantic region. Second, I will describe some of the things which we are trying to do as an industry association to alleviate insurance burdens for our members. Finally, I will make one legislative proposal which we believe could provide at least part of the solution to our current troubles.

I. THE LIABILITY INSURANCE PROBLEM

The insurance problems in the Southeast primarily relate to the cost and availability of P&I insurance. P&I insurance, as you know, protects the boat owner against liability for the personal injury or death of crew members. As a practical matter, it is also a form of comprehensive health insurance for crew members, since a boat owner is liable for and P&I policies cover the "maintenance and cure" of a crew member who falls ill or is injured in service to a vessel.

Because there is no good source of data about what is actually happening in the industry, this past winter SFA sought to verify, through an informal survey of its members, just what the industry's experience with P&I coverage is. We found that our boat owner members, while still able to get insurance, almost universally have experienced substantial increases in the cost of P&I insurance over the last three years. At the same time, P&I insurance represents an increasing percentage of the insured value of the owners' vessels.[1] The increase in P&I premiums from 1982 to 1985 has been typically in the range of 20–50%, with the average being 30%. In addition, the cost of insurance as a percent of a vessel's insured value now seems to be generally in the 4–8% range. These costs appear to be rising substantially faster than the rate of inflation. The result is that insurance premiums today constitute a higher percentage of operating costs than they did several years ago, and in turn an operator's ability to run a profitable business is diminished.

The prognosis for P&I insurance in Gulf and South Atlantic fisheries is not good. While P&I insurance in still available, the availability is decreasing: a number of companies no longer provide P&I insurance in the Southeast, and others may well be on the verge of getting out of the business. At the same time, as I just noted, costs are going up. High loss ratios, making insurance unprofitable, are major reason for this trend. Some insurance companies have expresed the opinion that they have been subsidizing the fishing industry over the years in that they have been operating at a loss ratio in excess of 100% of premiums. When interest rates dropped, insurance companies could no longer use high investment earnings to offset premium losses—so premiums naturally had to rise to reflect actuarial experience. Aggravating the problem is the increasing number of large personal injury awards. Finally, it seems likely that the abolition of public health hospital benefits which used to be available to fishing vessel crew members has had much to do with increased premiums; in years past the Government essentially paid for the health care of the captain and the crew, whereas today the burden falls on the owner of the vessel and on the P&I insurer.

Unfortunately, for at least two major reaons, this situation is not likely to change soon, absent serious efforts by both the private and public sectors to make changes in the safety and/or compensation regime. First, fishing is not a hazard-free occupation. For example, in the 1970–1980 period, there was an average of 136.9 casualties per year among Gulf shrimp vessels, resulting in an average of 36.1 total losses per year and total damages, on the average, in excess of $2 million per year. While there are no good data on the number of injuries unrelated to casualties, the number is almost certainly large. The real and perceived safety problems in the fishing industry are exacerbated by the absence of generally applied standards for construction, equipment and maintenance in the commercial fishing fleet and the lack of training and/or certification requirements for fishing vessel masters and crews. Second, current liability law is generous to injured crew members, and there is no limitation of liability on P&I claims for the boat owner. Litigation is also costly to insurers. Thus, P&I claims are a fertile ground for plaintiffs' attorney, and their number appears to be growing in most major ports. The net effect of this combination of circumstances is that claims (and awards) are high, and so there is increasing upward pressure on insurance premiums.

If the current trends continue, there is no question in my mind that we will soon have an insurance "crisis" on our hands. Either we will have vessel owners who operate with P&I coverage, at substantially reduced profit levels, perhaps threatening the viability of their business, or we will have vessel owners who operate with-

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[1] I should note that the coverage which our members have is generally speaking well under $600,000 per crew member and $1.5 million per vessel—coverage limits which would be mandated by a draft bill circulated for comment by the House Merchant Marine and Fisheries Committee. Current limitations on P&I for the average fishing vessel financed in the Gulf and South Atlantic are ordinarily on the order of $100,000–$300,000 per crew member. Many, if not most Gulf and South Atlantic vessels simply do not have the earnings to support levels of liability insurance much above what they now carry. Consequently, without substantial further study of the economic implications of a mandatory insurance scheme, SFA is opposed to the coverage requirements in the draft House bill.

out any P&I coverage, thereby likewise threatening the viability of their business. The situation is obviously unacceptable in both cases.

II. SEARCHING FOR SOLUTIONS

It is essential to come up with good solutions to the insurance problems I have just outlined. The harvesting sector in our region is afflicted by a cost/price squeeze which increasingly diminishes the profitability of virtually all fishing operations. The shrimp industry is a case in point. Shrimp, of course, is the largest fleet in the Southeast, with more than 14,000 vessels in the Gulf and South Atlantic region. A number of factors make it more and more difficult for even the best of businessmen to operate a shrimp trawler successfully. These include: the high cost of diesel fuel; the high cost of capital; the loss of historical fishing areas, particularly off the coast of Mexico; the inability of harvesters to expand their market share, because shrimp is harvested at its biological limit; the strength of the dollar, which tends to attract imports to the U.S. market; declining catch per unit of effort because of the number of vessels in the fishery; local and regional variations in quality; and intense competition from imports which are often lower priced than the domestic product.

Many of these problems—interest rates, a strong dollar, etc.—are of a macro-economic nature and the industry can do little on its own to overcome them. A combination of public and private initiatives, however, may be able to address some of the other (and perhaps more tractable) of the problems faced by the fishing industry. Insurance, it seems to us, is one of those areas where there may be an opportunity, through such initiatives, to reduce costs and so increase profitability of fishing vessel operations.

In the last section of this testimony, I will mention one public, or legislative, initiative which SFA believes particularly deserves serious consideration. Now, however, I want to mention some initiatives which SFA itself is undertaking, for we believe the industry itself must shoulder a substantial part of the burden of responding to its own needs.

First, we have established an insurance section of SFA composed of our members in the insurance industry. These experts have met on two occasions in the last several months to see where most of the problems lie and what SFA can do to alleviate them. We have looked at such alternatives as group insurance, a workmen's compensation scheme, limitations on liability, and Government-funded re-insurance programs. While our discussions are still preliminary, I think there is general agreement on several things. One, it would be desirable for there to be some modification of the current tort system, i.e., by limiting the types of injuries compensable in tort, restricting lawyers' percentages of awards, and the like. While the difficulties of such an exercise should not be underestimated, it still appears worth trying. Two, we are doomed to ever-increasing premiums and jury awards unless we improve the safety awareness of the industry at all levels of operation. Meaningful self-regulation by the industry through industry-wide standards of training, safe outfitting and accepted practice, while not leading to an immediate reduction of premiums, could over a period of years have real beneficial effects. Three, a Government-funded re-insurance program, of the sort discussed in the last part of this testimony, seems to make sense.

Second, we are in the process of taking a well-established safety program utilized by Sahlman Seafoods in Tampa to see if the experience of that company can be transferred to the rest of the industry. Through a company-wide program, Sahlman Seafoods has been able to reduce substantially the severity of losses incurred by crew members on the company's vessels. The Sahlman program, in short, appears to work, but it takes a real commitment and an understandable and accepted set of criteria for vessel operators. SFA intends to come up with such a set of criteria for all its members.[2]

Third, we have come to realize that it is important to help those members of the industry who are willing to participate in a safety program and work toward the reduction of claims, and not those who are not willing to make a commitment to

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[2] The U.S. Coast Guard, it should be noted, is pursuing certain "uninspected fishing vessel initiatives" which have as a goal the reduction by more than 10% of fishing vessel casualties by the beginning of the next decade. In order to accomplish this goal, the Coast Guard intends to (a) publish voluntary vessel standards via its navigation and vessel inspection circulars and (b) create a safety awareness/personnel qualifications program through safety guides and formal courses at private institutions. This program, we hope, will be of substantial assistance in building our own criteria.

safety. In short, we don't want the good operators to suffer for the sins of the bad operators.

Fourth, we are taking proposals from any and all of the insurance members of SFA for new and innovative programs. We have been in touch with risk consultants and underwriters in a search for proposals that may result in sensible cost reduction for the industry. We are trying to let the underwriters know that we are willing to change our methods of operation if it can result in lower insurance costs.

In sum, tackling the insurance problem is a high priority for SFA. We believe that it is an area where we can make a difference, and we intend to do so.

III. ONE LEGISLATIVE PROPOSAL

While there is much that the industry can do on its own to try to reduce insurance costs, the industry cannot accomplish all that is necessary without some legislative assistance. We believe that it is possible to develop a proposal which attacks, as it must, both the safety and the cost sides to the equation simultaneously. What we would propose is essentially as follows:

(a) $10 million should be withdrawn from the Fisheries Loan Fund to establish a re-insurance pool for the fishing industry. This sum is a relatively small part of the Fisheries Loan Fund, which will amount to approximately $116 million at the end of FY 1985, and its use for the benefit of the fishing industry is appropriate. Indeed, it has been the consistent intention of the Congress that these monies, which are derived from foreign fishing fees, would be so used.

(b) The re-insurance pool would take the place of any other re-insurance pool in effect for the domestic fishing fleet, and domestic insurance companies would be able to write policies using the pool, subject to certain restrictions.

(c) Only vessels meeting certain minimum safety standards would be eligible for coverage via the re-insurance pool.

(d) In addition, only vessels whose owners had an ongoing safety program for their masters and crew members would be eligible for such coverage.

(e) Any participant determined to have submitted any false claim or otherwise engaged in any fraudulent activity would be removed from the re-insurance program.

(f) Peer review committees would be established in major ports to examine claims submitted to insurers to help determine their validity and to identify any person or firm not complying with the rules and regulations of the program.

(g) An appropriate federal agency would be charged with initially certifying that industry safety standards and programs complied with certain predetermined criteria and with reviewing such standards and programs on a periodic basis to ensure that compliance is maintained.

Mr. Chairman, we believe that this kind of a collaborative program between the industry and the Government holds real promise to bring down insurance costs and enhance vessel safety. It would take advantage of the ways in which the insurance industry now operates. Moreover, public dollars would over time be replaced by private dollars (in paid-in premiums), eliminating any budgetary consequences for the Federal Government. We urge the Committee, therefore, to give it serious consideration.

CONCLUSION

In conclusion, Mr. Chairman, I simply want to thank you again for bringing us together today. I believe that, working in collaboration, we can devise sensible solutions to reduce substantially the insurance burden on the fishing industry. On behalf of SFA, I pledge our organization to this effort.

Thank you. I would be pleased to answer any questions that you may have.

Senator TRIBLE. Thank you, Mr. Jones.

Ms. Vehrs.

Ms. VEHRS. Mr. Chairman, I am Kris Vehrs, Washington representative for the Texas Shrimp Association. We wish to thank you for the opportunity to testify before you today.

Insurance problems have plagued the industry for many years, but we find again in 1985 that they have escalated. The costs of both P&I and hull insurance are high, and continue to rise.

Within the Texas Shrimp Association, our P&I costs are the greater of the two problems. We see the principal sources of these problems as the large awards made by the courts in litigated cases

and the large out-of-court settlements. These large awards and settlements create a great uncertainty for marine insurance companies, making risk evaluations extremely difficult for them to make.

The Texas Shrimp Association, like the Southeastern Fisheries Association, has established an insurance committee to look at possible solutions to the insurance problem. This committee is working with our membership to organize a safety standard program to be adopted on a voluntary basis by the TSA members.

We believe that these standards should come from within the industry and should be self-imposed. We are also considering possible amendments to the Jones Act and looking at alternatives to the Jones Act such as a workmen's compensation program or the Longshoremen's and Harbor Act, or an arbitration board—all ideas which have been discussed here earlier.

We do not believe we have enough information today to be able to suggest which of these alternatives are politically feasible or which would serve the shrimp industry the best. We are asking for alternative relief—an exclusive remedy for the crewmen. We still need data on the cost of the alternatives, though, to enable us to do a comparison. Lowering the cost of the P&I to the boat owners is key. And yet, we do want to ensure that those crewmen with legitimate claims are compensated.

We are awaiting information from a Congressional Research Service study which was requested by several members of the House Merchant Marine and Fisheries Committee. This study should provide a profile of the marine insurance industry and compare some of the alternative approaches to paying claims.

In the meantime, we are trying to gather some information about the insurance problems within our membership. We distributed a survey requesting information on boat owners' insurance companies, on the premium rates by year for both hull and P&I insurance, and information on their claim experience.

We do not have all the documentation available yet, but the preliminary results show that our hull rates fluctuate from about 2.17 percent of the value of the vessel to about 3.85 percent of the value of the vessel. The deductible on hull loss now ranges from $5,000 to $10,000. The P&I cost ranges from about $2,800 per boat to about $6,000 per boat; the deductible from $1,000 to $5,000 per incident.

The higher rates that I have mentioned seem to be from those individuals who have renewed their policies most recently. The Texas Shrimp Association has also requested information from the National Marine Fisheries Service about the insurance experience of the vessels covered by the Fishing Vessel Obligation Guarantee Fund. What we have requested is an analysis, by region, of the availability of insurance, insurance premium rates, and deductible rates. We hope to be able to have some results from this request in May.

Most of the solutions discussed up to this point are long term in nature. We are also looking to the Fisheries Loan Fund as a possible source of immediate relief, suggesting that that fund be used to establish a Government reinsurance program.

We understand that as of October 1985 the Fisheries Loan Fund will have approximately $130 million in the fund. From discussions with several insurance companies, we believe that one of the rea-

sons for higher premium rates is the lack of a reinsurance market. There is a void in the reinsurance market, and the insurance companies themselves are being forced to insure for the total risk. We have not been able to work out the details of such a reinsurance program, but are looking at the Flood Insurance Program and the Crop Insurance Program as possible examples.

We are hopeful that this Fisheries Loan Fund money could be used as the initial capitalization of a self-supporting program.

We thank you for the opportunity to testify before the subcommittee and look forward to working with you in developing long-term solutions.

[The statement follows:]

STATEMENT OF KRISTIN L. VEHRS, WASHINGTON REPRESENTATIVE, TEXAS SHRIMP ASSOCIATION

Mr. Chairman and Members of the Committee, I am Kris Vehrs, Washington Representative for the Texas Shrimp Association. We wish to thank you for this opportunity to address you on the insurance problems within the fishing industry.

The Texas Shrimp Association is a trade association representing shrimp harvesters residing in Texas, as well as most of the other Gulf of Mexico coastal states. Currently, our membership consists of individuals who control approximately 420 Gulf class shrimp vessels and 100 support and service corporations.

Insurance problems have plagued the fishing industry for many years. In the 1950's, the fishing industry in Massachusetts and Florida experienced an insurance crisis. The problems then were insufficient protection and high insurance costs. The Federal Government sponsored a survey and two studies of the problem. The studies were case histories, analyses and recommendations. No consensus on solutions could be developed.

In 1973, the National Oceanic and Atmospheric Administration held a nationwide conference on commercial fishing vessel insurance. While attendees discussed the issues in depth, they developed no consensus on a solution.

In 1985, insurance problems have once again escalated. The costs of both protection and indemnity insurance (P&I) and hull insurance are high and these costs are continuing to rise. Within TSA, our P&I costs are the greater problem. The number of maritime claims filed is snowballing. The principal sources of the problems are large awards made by the Courts in litigated cases and large out-of-court settlements. I understand that excessive out-of-court settlements are being agreed to because of fear of what a judge or jury might award.

These large awards and settlements have created a great uncertainty for marine insurance companies; risk evaluations are extremely difficult to make. Insurance companies indicate they are experiencing losses of 160% of premiums per year on fishing vessel insurance. Since the companies are losing money at that loss rate and since they are in the business to make money, they are dropping out of the fishing vessel insurance business. This has greatly limited the number of suppliers of marine insurance for the fishing fleet. To my knowledge, there are but four or five insurance companies left who will insure shrimp vessels. In November, several TSA members had policies pulled mid-term—the reason given was that the companies were getting out of the business.

The Texas Shrimp Association believes that the problem is twofold: making certain that insurance is available and lowering the premium rates. Although stated in these simple terms, the problem is very complicated. We have been studying its causes and possible solutions. In one effort to learn more of the facts, TSA met in January with other fishing industry representatives, staff members from the Merchant Marine and Fisheries Committee and staff from the Congressional Research Service (CRS). The result: a request was submitted to CRS by several Members of the Merchant Marine and Fisheries Committee to study the insurance problems. I have attached a copy of the request for the record. Briefly, the study should: (1) provide a profile of the marine insurance industry; (2) compare the alternative approaches to paying claims; (3) examine the effect of fishery management activities on safety, and (4) assess the effect that the Coast Guard vessel safety inspection has on small passenger vessel insurance. We are anxiously awaiting the results of this study.

TSA has established an insurance committee to look at possible solutions to the insurance problem. The Committee is working with the membership to organize a safety standard program to be adopted on a voluntary basis by TSA members. We also are considering possible amendments to the Jones Act such as: limiting liability, prohibiting attorney contingency fees, defining the term "seaworthy" and changing the burden of proof. (We do not favor the approach in the present discussion draft on Jones Act changes.) We are also considering alternatives to the Jones Act such as a workmen's compensation scheme, the Longshoreman's and Harbors Act or an Arbitration Board. Unfortunately, we do not believe we have enough information yet about which of these alternatives are politically feasible nor which program would serve the shrimp industry the best.

While gathering information on the alternate payment schemes, TSA has been working on several programs to benefit its membership. We have been exploring the establishment of a group insurance plan where TSA would collectively purchase insurance from a commercial insurer. Under this plan, the insurance companies' overhead costs can be reduced by working with a large account. We have met with several insurance counselors about the idea. We are also investigating the nuts and bolts of self-insurance. The obvious disadvantage is the necessity for a large amount of capital.

TSA has an ongoing contract with Medical Advisory Services (MAS) which provides our boats with immediate medical advice at sea. The system operates by radio and MAS has physicians on call 24-hours to provide assistance. Additionally, each TSA boat is equipped with a manual explaining the MAS system and recommending what should be included in a first aid kit.

TSA has distributed a survey to its membership to obtain documentation of the insurance problem. The questionnaire requests information on an owner's insurance company, premium rates by year for both hull and P&I insurance and claim experience. All of the documentation has not been received yet by the preliminary results indicate that hull rates fluctuate from 2.17% of the value of the vessel (represents a vessel with no claims ever filed against it) to 3.85% of the value of the vessel. In some cases, the owners are unable to insure for the total value of the vessel, but only 70–80% of the value. (The value referred to here is the market value of the boat). Another trend is toward higher deductibles and less complete hull coverage. For example, inchmaree (primarily negligence) coverage has been omitted in many policies in which it was previoulsy included. The deductible on hull loss now ranges from $5,000 to $10,000. The P&I cost ranges from $2,822 per boat to $6,000 per boat, with the deductible ranging from $1,000 to $5,000 per incident. The higher rates in both the hull and P&I appear to be from those individuals who have renewed their policies most recently. Insurance companies are now requiring vessel owners to give pre-employment physicals.

Finally, TSA requested information from the National Marine Fisheries Service about the insurance experience of the vessels covered by the Fishing Vessel Obligation Guarantee Fund. We requested an analysis, by region, of the availability of insurance, insurance premium rates and deductible rates. We expect to have the results of this request in May. We believe this information will be useful in documenting the different trends in different regions.

Most of the solutions discused up to this point are long-term in nature. We would like to discuss immediate relief. We recommend that the Fisheries Loan Fund (FLF) money, which has been obtained from foreign fishing fees, be used to establish a government reinsurance program. We understand the FLF will have approximately $130 million as of October 1985. After discussions with several insurance companies, we understand that some of the reasons for higher premium rates is the lack of a reinsurance market. Lloyds of London, a primary reinsurer, has been decreasing its activities with fishing vessel insurance. There is a void in the reinsurance market and the insurance companies themselves are being forced to insure for the total risk, without the ability to reinsure. We have not worked out the details of such a program but are looking to the Flood Insurance Program and the Crop Insurance Program as examples. We hope that a self-supporting program using the FLF money as initial capitalization can be set up quickly.

TSA finds the present Jones Act system totally inadequate. It encourages exaggerated and even bogus claims. It does not ensure that the truly injured crewman receives awards for his losses. TSA members believe that injured crewmen should be properly assisted but we believe the system is being abused.

Thank you for the opportunity to testify before the Subcommittee. The insurance problem is of major significance and we in the industry can not solve it alone. We appreciate your concern and we look forward to working with this Committee in developing solutions.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR STEVENS AND THE ANSWERS

Question. Will the study underway by the Congressional Research Service (CRS) evaluate the relative costs of the present liability system compared to the most frequently suggested altenatives, such as a workers compensation system?

Answer. The Congressional Research Service study will probably not evaluate the relative costs of the present liability system compared to a workmen's compensation scheme. Although we had discussed the need for that information with CRS, they didn't believe they could provide it to us. We are presently working with The National Council on Fishing Vessel Safety and Insurance in an effort to fund such a cost comparison study.

Question. Do you have a rough idea how much group insurance may lower your members' insurance premiums?

Answer. We have had several preliminary meetings with an insurance counsellor regarding group insurance. Initially group insurance will not lower many of our member's insurance premium rates. It will, however, enable us to provide insurance for some members who canot presently obtain it. It will take between three to five years to establish both an experience rate and the cohesive operation of an insurance group. The overhead costs of administering group insurance should be reduced about 30-40 percent and, therefore, after the establishment period our costs should be reduced.

Question. You suggest the establishment of a government re-insurance program. If the commercial market is unable to provide re-insurance of reasonable rates, won't a federal program require a subsidy to make this program attractive?

How long do you expect it will take to work out the details of your reinsurance proposal? Would you then anticipate submitting legislative language to Congress, or can this program be established through administrative action?

Answer. A Federal program will require a subsidy to establish a government reinsurance program. We are hopeful that once the program is established that it could become self-supporting. Insurance is a significant problem for TSA members and we believe we need some short-term help. We believe the program should require certain predetermined criteria be met by the participants.

Senator TRIBLE. Ms. Vehrs, thank you for your testimony. You indicate that your association has a number of studies underway seeking additional information. What is your timetable for assembling this mass of data and coming forth with a game plan?

Ms. VEHRS. The Congressional Research Service study we are told is to be available toward the end of April. The documentation that we are working on within the TSA membership, we hope to have all of that information available in the next couple of weeks and will aggregate the figures. As far as the information from the National Marine Fisheries Service, I recently met with one of the staffers from the National Marine Fisheries Service, and we have had to change the scope of our request a bit. What we asked for would have required probably two fulltime staff from now until next year. But we do expect some information in the next month or two.

Senator TRIBLE. Well, as information becomes available to all of us, let us share it and move forward together.

Ms. VEHRS. Yes, sir.

Senator TRIBLE. Will the study now underway by the Congressional Research Service, evaluate the cost of the present liability system as compared with the alternatives, for example, a Workmen's Compensation System?

Ms. VEHRS. We have asked them to the best of their ability to evaluate the cost. If I may read from the letter, what the letter says is:

A brief overview of the existing system of remedies for work-related injuries to fishing vessel crews and an analysis of proposed or potential workers' compensation remedies and the relationship that workers' compensation would have to other remedies.

If this particular survey does not come up with cost data, I understand from Dennis Nixon, one of the witnesses yet to come, that he will be working on some cost data information.

Senator TRIBLE. Now you have both suggested the creation of a reinsurance fund and the allocation of $10 million from the Fisheries Loan Fund. How was that figure arrived at, and is that likely to be sufficient, or is it likely that additional contributions will be necessary?

Mr. JONES. Senator, we arrived at that figure based on the amount of premiums that we were able to figure out were being generated in the Gulf and South Atlantic area. As a matter of fact, it would not be enough money nationwide, but I think it would be more than enough for the area in which I have some expertise—that is, from North Carolina to Texas—because if the insurance losses were running at 105 or 110 percent of premiums, then $10 million would have covered all of that.

Senator TRIBLE. Well, we would certainly want to make sure the $10 million also reached to Virginia.

Mr. JONES. We would amend that, yes, sir.

Senator TRIBLE. I suspect a few of my colleagues will be heard from as well, suggesting that it ought to reach as far as the West Coast. So that is a factor we will have to pursue.

Ms. Vehrs, again, you are assessing that question as well, are you not?

Ms. VEHRS. Yes, sir, we do not have the details worked out, as I did state in the testimony, but we would be glad to work with you and your staff.

Senator TRIBLE. We will do it. I thank you very much.

I may possibly ask you to answer a couple of additional questions in writing. I thank you for your testimony.

Mr. JONES. Thank you, Senator.

Senator TRIBLE. Next is the panel of James Costakes, executive director of the New Bedford Seafood Council; and Lucy Sloan, executive director of the National Federation of Fishermen.

Welcome.

STATEMENTS OF JAMES COSTAKES, EXECUTIVE DIRECTOR, NEW BEDFORD SEAFOOD COUNCIL; AND LUCY SLOAN, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF FISHERMEN

Mr. COSTAKES. Good afternoon. My name is Jim Costakes. I am executive director of New Bedford Seafood Council and general manager of the New Bedford Seafood Producers Association.

The seafood council represents 180 vessels and 1,600 crewmen who fish out of the Port of New Bedford, MA. I have a prepared statement I would like to submit for the record, but at this time I will restrict my remarks to a brief summary of that statement.

From the testimony you have probably already heard today, you are well aware of the fishing industry's problem with regard to the insurance issue. In our area, our problems are centered around the large awards and settlements associated with P&I claims. Hull ex-

perience has generally been very good. Just to give you an idea of the experience encountered in our area, in 1980 one underwriter had a loss ratio of 100 percent whereas in 1984 this ratio doubled. In other words, in 1980 the insurance company was paying out a dollar for losses for every dollar of premium earned.

In 1984—oh, our insurance people estimate that the value of awards and settlements have quadrupled over the past 3 or 4 years. It is common in frequent situations to see claims settled for $50,000, $60,000, and the range goes all the way up to $900,000 to $1 million. There seems to be no hesitation on the part of an injured party to seek immediate claim for the slightest injury.

Let me emphasize that we do not have any problem with the fact that the serious legitimate injuries need to be compensated for. However, we are very concerned and annoyed at inappropriate awards and settlements that are granted for the questionable claims. Vessel owners in New Bedford face minimum premium increases of 20 percent over the previous year ranging as high as 50 percent in some cases, and these are the ones fortunate enough to get insurance. Others not as fortunate end up paying even more or are forced into a marshall sales if they cannot get coverage.

Unlike the insurance companies which can pass on their increased premiums and expenses in the form of higher premiums, the fisherman cannot. He is the one who suffers the most because his cost of insurance cannot be passed on to anyone. One of the big contributors we see to the whole problem in these high awards and settlements is the number of attorneys who establish offices in our area looking for a piece of the action.

At the fishyards in New Bedford I constantly see runners for the attorneys waiting in the arch room for the boats to come in. Many times they find out about an injury and have the injured party referred to an attorney before the vessel owner even learns that there is an incident.

Senator TRIBLE. They have runners?

Mr. COSTAKES. Yes.

Senator TRIBLE. Tell me about those runners.

Mr. COSTAKES. Well, they are people that are involved, they are a little bit more familiar probably than an attorney would be as to who the active fishermen are, and they immediately find out whether there has been an injury or not, and they immediately pursue that and get statements from them and promise them the world, and they seem to like it.

Senator TRIBLE. Ah, the enlightened bar.

Mr. COSTAKES. Aah-hmm.

Actually, one of the problems is that the vessel owner does not even know that an incident has occurred, and that is one of the biggest problems we have, which makes it more difficult for the vessel owner to work out a mutually accepted agreement with the crewman without having to go to court.

We are very concerned about the safety of our vessels and crewmen, and the safety program our council has in place in New Bedford goes beyond the requirements of the Coast Guard regulations applicable to our vessels. Despite the precautions that we can take to prevent accidents and injuries aboard a vessel, it should be remembered that operating on the high seas requires a greater

degree of judgment and safety awareness. No amount of equipment or inspections can guarantee it against human error, poor judgment, or inexperience.

In conclusion, we would like to recommend that it be made mandatory for a written injury report to be filed by the injured party with the vessel captain within 24 hours of the incident. It is also critical to get the truth of what happened, and with the passage of time it becomes more difficult to recall specific events or facts. This requirement would help to ensure that they would be recorded for further investigation, if needed.

We would also like the committee to consider legislation which would restrict an injured party from filing a civil action for at least 60 days from the date the alleged injury occurred. The purpose of this delay would be to allow an investigation by a screening panel similar to that used in medical malpractice cases to determine whether a claim is with or without basis. The panel would make its determination after reviewing the facts and the evidence presented surrounding the incident and examining the nature and extent of the injury. The members of the screening panel should consist of impartial expèrts in the legal and medical fields and a lay person. We believe this procedure would help to substantiate the serious, legitimate claims for damages or dissuade a plaintiff from pursuing his case in court. It is in no way intended to deny an injured party the right to sue regardless of the findings of the screening panel. It would be suggested, however, that if a suit is subsequently brought by an injured party, then the findings of the panel should be allowed to be admitted as evidence in the proceedings that follow.

We realize that we do not have all the answers to the problems, but are willing to consider other proposals, and I hope with the help of this committee we will be able to come up with a workable and effective solution.

I appreciate your interest in this serious matter, and we would be glad to answer any questions you may have.

[The statement follows:]

STATEMENT OF JAMES COSTAKES, EXECUTIVE DIRECTOR, NEW BEDFORD SEAFOOD COUNCIL

Good afternoon. My name is James Costakes and I am Executive Director of the New Bedford Seafood Council and General Manager of the New Bedford Seafood Producers Association. The New Bedford Seafood Council represents over 180 vessels and 1,600 crewmen who fish out of the port of New Bedford, Massachusetts. In terms of the value of landings, New Bedford is the largest commercial fishing port in the United States.

I appreciate the opportunity to appear before the Committee today to discuss the problems facing the New Bedford fleet with regard to marine insurance and possible steps that can be taken to alleviate these problems.

It is widely known by now that the fishing industry in all areas of the country is in the midst of a costly dilemma where we face dramatically higher premiums for marine insurance, sudden cancellations of policies, extreme difficulty in getting a policy at all or lower coverage than what is desired. This is all happening as fewer and fewer insurance companies remain in the marine insurance business. The insurance companies have taken the position that it is no longer profitable to remain in this line of business because their bottom lines have been adversely affected by the fact that more dollars are going out to pay underwriting losses than are coming in by way of premiums. To illustrate this point, in 1980, one underwriter in the New Bedford area experienced a 100 percent loss ratio whereas in 1984 this ratio jumped to 200 percent. What this means is that in 1980, the insurance company was paying out the same amount in indemnity dollars that it was taking in on premiums but in

1984, it paid out two dollars for every one dollar of premium earned. This experience is attributed to the increasingly large awards associated with jury trials or out of court settlements.

The end result of it all is that insurance permiums will continue to climb and policies will be more difficult to get unless the marine insurance industry's experience improves.

Turning to the situation in New Bedford, our problems are primarily related to the protection and indemnity (P&I) policy rather than the hull policy. Our hull experience has generally been very good. I am sure this Committee will hear much of the testimony today focusing on the P&I problem.

In our area, the matter of insurance is not a relatively new problem but is something that has plagued us for about the past five years. The recent attention focused on the problem stems from the frequency with which we are seeing much larger awards/settlements for cases in which the legitimacy of the claim is questionable. Our insurance people estimate that the value of awards/settlements has quadrupled over the past 3-4 years. Their experience has ranged from $50,000 to $60,000 awards/settlements, a common and frequent payout, all the way up to $800,000 to $900,000. This is an alarming situation which desperately needs to be controlled. There seems to be no hesitation now on the part of an injured party to seek an immediate claim for the slightest injury. Let me emphasize that we do not have any problem with the fact that the serious, legitimate injuries need to be compensated for, however, we are very concerned and aggravated about inappropriate awards/settlements that are paid for the doubtful or fake claims.

With insurance companies forced to pay on these large awards/settlements, the ones who suffer are the fishermen, vessel owner and crewmen alike. Insurance companies can raise their permiums, they can get out of the marine insurance market or tighten up their underwriting criteria forcing a refusal to renew policies, cancellations of existing policies and greater difficulty in getting a policy. With the fisherman, its a different story. The cost of insurance cannot be passed along to anybody. He has to absorb an expense which can usually amount to 25 percent of the vessel owner's net proceeds after the deduction of crew shares. That is significant.

The vessel owners in New Bedford have faced minimum premium increases of 20 percent over the previous year, ranging as high as 50 percent in some cases. These are the ones fortunate enough to get insurance. Others not as fortunate end up paying even more or are forced into a marshall's sale if no one is willing to provide coverage.

Consider the example of a policy up for renewal by a vessel owner in New Bedford with four boats. For the 1984-85 year he is paying a premium of $24,000 per boat with hull coverage of $450,000. His individual loss ratio is between 80 percent to 100 percent. Next year the insurance company has quoted a $39,000 permium per boat with hull coverage reduced to $350,000.

A big contributor to the phenomenon of high awards/settlements has been the numbers of attorneys who have established offices in New Bedford, seeking to get a share of what could eventually amount to some very lucrative settlements. I attend the fish auction in New Bedford everyday and constantly see "runners" for the attorneys waiting in the auction room for the boats to come in. Their purpose is to find out whether any injuries occurred during the trip and to direct those who have been injured to the services of an attorney. Many times the runners will find out about a crewman's injury even before the vessel owner does. Given the situation where an injured party is induced by attorneys with promises of large awards/settlements, it becomes much harder for the owner to sit down with the injured party to try and work out a mutually acceptable agreement without the costs and expenses of having to defend claims.

Before moving to our proposals for mitigating the problems which I have addressed, I think it is important to note that we are very concerned about the safety of our crewmen and vessels as evidenced by the safety program which we have in place. New Bedford is a unionized port and both labor and management are dedicated to improving the safety conditions on all vessels. Through the program, publications are sent out regarding Coast Guard regulations or any other information dealing with safety requirements or safety regulations. In addition to complying with Coast Guard safety requirements, our labor-management contracts contain other safety features and precautions such as the following:

1. Two full-time safety officers who have the responsibility of inspecting vessels for all safety requirements.

2. Emergency radio equipment is mandatory.

3. EPIRB's (Emergency Position Indicator Radio Beacon) are required. This is an automatic radio locator that activates where it is placed in water. It assists in locating a sinking vessel.

4. Fire alarm and bilge alarms are required on vessels.

5. The captain and mate must be qualified by Red Cross first aid and CPR courses.

6. The names of all crewmen on a vessel must be filed prior to leaving port.

7. Manning requirements are set forth:

(a) Crew size.

(b) Training.

(c) Mandatory watches.

Despite the efforts that we devote to our safety program, all injuries cannot be prevented. Operating on the high seas is dangerous. A greater degree of judgment and safety awareness is required. There are precautions that we can take to prevent most accidents and injuries that occur on board a vessel, but no equipment or inspections can guarantee against human error, poor judgment or inexperience.

In the event an injury occurs, it is always critical to get to the truth of what happened. Therefore, we would like to recommend that it be made mandatory for a written injury report to be filed by the injured party with the vessel captain within twenty-four hours of the incident. With the passage of time it always becomes more difficult to recall specific events or facts with such a requirement would help to ensure that they be recorded for further investigation if needed.

We would also like the Committee to consider legislation which would restrict an injured party from filing a civil action for at least sixty days from the date the alleged injury occurred. The purpose of this delay would be to allow an investigation by a screening panel, similar to that used in medical malpractice cases, to determine whether a claim is with or without basis. The panel would make its determination after reviewing the facts and evidence presented surrounding the incident and examining the nature and extent of the injury. The members of the screening panel should consist of impartial experts in the legal and medical fields and a lay person. We believe this procedure would either help to substantiate the serious, legitimate claims for damages or dissuade a plaintiff from pursuing his case in court. It is in no way intended to deny an injured party the right to sue regardless of the findings of the screening panel. It would be suggested, however, that if a suit is subsequently brought by the injured party, then the findings of the panel should be allowed to be admitted as evidence in the proceedings that follow.

We realize that there are no magic solutions to the insurance problems we currently face, but we cannot literally afford to see this crisis continue much longer. P&I claims under the doctrine of unseaworthiness are getting out of hand. Cases of unseaworthiness have held the interpretation of this remedy to be very broad and vague. So broad that it is used to hold the owner liable for virtually every type of injury. With the help of this Committee, it is hoped that a feasible and effective solution can be found.

I look forward to working with the Committee on this highly important matter.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR STEVENS AND THE ANSWERS

Question. I'm impressed with the list of safety requirements in your labor-management contracts. Do you favor mandatory safety and manning requirements for those who don't have collective bargaining agreements?

If not, do you have any thoughts on how voluntary industry standards could be formulated and implemented?

Answer. I am not sure whether or not we should have mandatory anything due to problems of inspection and enforcement, as well as the initial problem of establishing the safety standards as well. This area may be self-policing by the insurance companies themselves. On the other hand, it may be that if there are standards and the vessel in fact meets them, then adhering to those standards might very well, if properly written, be a defense to any claim of unseaworthiness by adhering to those standards. It also makes slight deviations from the standards clear evidence of negligence.

Question. You recommended that a mandatory written injury report be filed by the injured party with the vessel captain within 24 hours of the incident.

Is this practical for vessels which are away from port for several days or longer?

Shouldn't there be some reciprocal duty on the vessel captain?

Answer. It is clearly practical for a report to be filed. Perhaps instead though, each man should sign off the vessel, indicating either injury or freedom from injury.

Question. You also recommend screening panel for injuries. Doesn't that preempt the role of jury? Should an injured party have the right to present evidence and have the right to counsel? If so, wouldn't such a process end up as a mini-trial with all the added expense and delay?

Answer. The pre-screening panel, if written along the lines of the malpractice tribunals, which now exist in about thirty-four states, do not infringe at all upon the man's right for a jury trial. Further, the screening panel should address both liability and injury. One of the real problems is that Admiraly jurisdiction imposes liability on the vessel for unseaworthiness. This is generally an easier standard for the injured man to meet, but is narmally triable before a Judge without a jury since Admiralty jurisdiction does not provide for a jury. The Jones Act provides for a jury, but has a higher standard of negligence, which is more difficult for the injured party to prove. The problem is that the counts in unseaworthiness and negligence are brought in the same action and the jury generally applies unseaworthiness standards to the negligence action. I can only say that the pre-screening panels have been effective in the medical malpractice area in most of the states and it might very well benefit both parties.

Question. What are you views on worker's compensation for fishermen? Do you think we have enough information to recommend such a change?

Answer. Certainly more information is needed, and the National Fishing Vessel Safety and Insurance Committee has started the task of gathering the data necessary to assess the economics before we are able to determine any benefits. If Compensation were adopted, there would still be the problem of non-occupational donors which the vessels are presently responsible for, and no questions of liability alone. I think that if you checked on the current harbor workers and longshoremen's rates and compare them to P&I rates, you would generally find that they exceed general P&I rates.

Senator TRIBLE. Ms. Sloan.

Ms. SLOAN. Thank you, Mr. Chairman. We have been working on this problem. I asked Jim before we came up how long he had been working on it, and he said, oh, about 10 years, and I think it has been at least that long that I have been involved with this, too.

The severity of the problem comes and goes, but every time it becomes more severe, as it is now, we fall back on the fact that we as an organization nationally with everything from everything from small lobster skiffs to a 296-foot catcher processor, are more comfortable on balance at least initially with industry generated fleet-specific programs.

One of the reasons for this is there is no reliable data base in the country on what kind of accidents, either hull or P&I, have actually taken place. Each data base of which we are aware is imperfect and leads therefore to altogether imperfect conclusions.

And it has made us very nervous looking at some of the things the Coast Guard has used, for example, and that has been the reason that in this particular round of concern we are very interested to wait to see what the CRS study has to tell us, because they are in a better position than we are to do homework on some of those issues, and I would rather have the opportunity to avail ourselves of those resources than to try to do it myself.

There are, as you know as well, field hearings which Congressman Breaux and Congressman Studds have scheduled on this issue around the country, and I think that will help us on the fleet-specific information.

I am concerned that we get a reliable data base about what is actually going on before we begin to try to embark on national solutions. I think there are some regional and fleet solutions on which we can work. One of the things that would be fallout from

industry-generated programs would be not only a better data base but one would hope a diminution of the ambulance chasing avarice to which Jim referred.

Unfortunately, the auction in New Bedford is not the only place that takes place, and it is a real problem for us. If there were a data base with which we felt comfortable, we would feel that much more comfortable about going to the underwriters with something like that and trying to work directly with them.

I think that working directly with the underwriters is probably going to be easier on hull problems than on P&I, but on P&I, we still do not, despite several good efforts, have what is reliable information, and as I think I heard Dave Burney say, no matter how much you inspect something, there is still going to be what he called, I believe, the slip and fall accidents. And it is a problem that will vary from fleet to fleet.

The potential hazards of being at sea varies widely from a 20-foot lobster skiff in the internal waters of Maine to a big catcher-processor or a trawler operating in the Bering Sea. We would have quite different standards, and yet an arm lost aboard a lobster vessel is no more or less valuable than an arm lost aboard a catcher-processor.

So I think we have to balance the different operating conditions with the different kinds of potential hazards that we want to mitigate against. For that reason, we are very much concerned as a national organization about operating regionally within fleets because we are concerned, for instance, I gather there was some discussion of mandatory inspection. That bothers us for several reasons, not the least of which, as I have testified I think six times against Coast Guard User Fee Programs. The first time I testified against it, the Coast Guard changed the data base for the User Fee Program three times between the time Congressman Studds announced the hearing and the time he actually got to hold it, and it is that kind of data base problem that makes me skeptical of a national solution immediately.

The difficulty, among other things, with a mandatory inspection program is that somebody is going to pay for it. And the National Federation of Fishermen has said that we would be quite willing to pay reasonable fees for services rendered, but again, nobody could provide us with any information about what the reasonable services would be. A mandatory inspection would doubtless reenforce the administration's ongoing attempt to get user fees for the Coast Guard, and that is something with which we have had considerable problems because the data base has been unrealistic.

So in looking at that problem and in looking at the fact that most of us have been talking with the Coast Guard about the voluntary initiative, we think that that combined with individual work among the fleets in the short term, and working as soon as we can as we begin to get information from the CRS study and from the House field hearings, will be the best way to proceed on this.

I perhaps, although this is acute, the problem is as bad as it has ever been, I started my career in this industry with an emergency, one about which people said the end of the world would come if we did not get our own way. The 200-mile bill was originally entitled

an Emergency Act, after all. There have been three or four emergencies since then. One of the most traumatic ones was when the fuel price went up.

So I am inclined to think that, although this is serious and we have to work on it now, that rushing to judgment rather than going slowly enough to be sure that we have solid data is not going in the long run to help us resolve what is truly a serious problem threatening our opportunities fully to use our resources in the exclusive economic zone.

Thank you.

[The statement follows:]

STATEMENT OF LUCY SLOAN, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF FISHERMEN

Good afternoon, Mr. Chairman, Senator. I'm Lucy Sloan, Executive Director of the National Federation of Fishermen. NFF is the only national organization of commercial fishermen. Our members fish from Alaska to Mexico and from the Gulf of Maine to the Gulf of Mexico. Among the species they harvest are demersal and pelagic finfish, crab, salmon, albacore, tuna, shrimp, swordfish, lobster, clams and scallops.

The issue has been a problem for the fishing industry for the twelve years I've worked with US fishermen. Well before I became involved, the problem waxed and waned. Today it is acute. And today we are putting more resources, both intellectual and material, into trying to resolve the overall problem and the various manifestations of it in different fisheries. As one brief review of reasonably current—certainly representative—efforts fishermen themselves are making, I would request that testimony I gave to the other body in 1983 be submitted for the record. We have additional initiatives now within the industry, and we're also working with other Members of Congress on various approaches.

We are concerned, however, that no new legislation be introduced until we have received and have had time to assess the Congressional Research Service's report to the Merchant Marine and Fisheries Committee on fishing vessel safety and insurance. We're told that that will be ready the end of April.

Meanwhile, as we continue to work on the problem, it becomes increasingly clear from my members that there's a growing consensus that, regardless of what additional possibilities there may be, many of them think that the best protection will be industry-generated fleet safety programs worked out among the different fleets and with interested underwriters and brokers. I worked with just such a program on the West Coast, the American Fishermen's Safety Incentive Program. That program was discontinued by mutual agreement because of difficulties among some of the principals, not because it lacked support from either side. In fact, at a major safety and insurance conference in Seattle last December, several fishermen who'd been part of the program indicated strong interest in similar possibilities.

Limits to liability and to attorney's fees are complex issues. Both are currently under intensive review. The CRS study is to include, inter alia, an analysis of proposed or potential workers' compensation remedies and the relationship that workers' compensation would have to other remedies. It is also to include a description of existing or proposed standards for review of limitation of attorneys' fees in liability cases. Until we have this, then, I urge that we continue to think and to work together and plan further cooperative efforts after we have had the opportunities to evaluate the options which the CRS study may help us to develop.

Thank you.

Senator TRIBLE. Ms. Sloan, I can assure you this Senator does not need to be encouraged to be thoughtful in his approach.

I thank you for your testimony this afternoon.

Dennis Nixon, coordinator, Marine Affairs Program, University of Rhode Island.

Mr. Nixon, welcome.

STATEMENT OF DENNIS W. NIXON, COORDINATOR, MARINE AFFAIRS PROGRAM, UNIVERSITY OF RHODE ISLAND, KINGSTON, RI

Mr. NIXON. Thank you very much, Senator. I appreciate the opportunity to testify today.

Senator, the disadvantage of being the last witness in a panel of witnesses as knowledgeable as those that I am following is that they have in fact made the case that there is a very serious problem in the U.S. fishing industry with regard to vessel insurance.

Senator TRIBLE. Mr. Nixon, let me interrupt by saying that you were purposely placed as the clean-up hitter. I would hope that you would tie all these pieces together for us.

Mr. NIXON. Yes, sir.

Senator TRIBLE. And present a very cogent case for what action ought to be undertaken.

Mr. NIXON. The advantage of being the last speaker is that no one can contradict me on my proposed solutions.

Senator, I became involved with this problem about 4 years ago, when fishing groups in New England asked me for some basic assistance in what was involved with the marine insurance policies they were forced to buy. I produced this Commercial Fishermen's Guide to Marine Insurance and Law as an effort to make the subject a little bit more understandable.

About the time that was released, however, everything broke loose in the insurance market. The current crisis we are facing is about a year old and it is getting worse on a weekly basis.

I think I would like to underscore as much as possible the testimony that Mr. Wells gave earlier. There is a good chance that if we do not work together on the kind of long-term solution necessary to resolve this problem, there will be significant jobs lost; not just in Virginia but in Alaska, in New England, and in the gulf. These are fisheries that are already being impacted by management decisions, decreases in stocks, the boundary decision with Canada, and several other factors. This crisis is forcing many fisheries that are just barely getting along to go under. And the problem is going to be getting worse.

I have had the opportunity over the past year to travel and speak with fishermen from all of those places, and I can assure you that what you heard today was not exaggerated in any way.

I would also add that one particularly large interested party is the U.S. Government, the guarantor of mortgages for perhaps 800 vessels, through the Fishing Vessel Obligation Guarantee Program. Senator, you may in fact own those 800 vessels by the end of the year if they are not able to get insurance. They cannot leave the dock without it and thus you may find that the U.S. Government fishing fleet will be the largest one in the country by the end of the year. I know that you realize it is in all of our interests to come up with a creative solution to this problem.

I would like to point out to the committee that this is really the third major crisis we have had in marine insurance on commercial fishing vessels. The first time occurred in the mid-1950's, when fishermen approached the Congress for help.

A study was commissioned and produced this document, "Hull Insurance and Protection and Indemnity Insurance of Commercial Fishing Vessels," published in 1957. It suggested, among other things, that the method that we used to pay injured fishermen disregarded completely the financial, economic, and operational characteristics of the industry. They said it was unjust because it was wasteful, slow, and fostered misunderstanding and bitterness between employer and employees, and it encouraged the use of dishonest methods as a way of resolving these disputes.

That was 1957. The situation calmed down after that. Nothing was done until 1973, when another serious crisis erupted, which produced a report in 1975 from the ad hoc group on commercial fisheries, which went as far as producing draft legislation. The draft legislation, as I am sure you know, involved a compensation system.

If you examine the testimony from all of the witnesses you have heard today, with the exception of the gentleman from Alaska whose primary problem was hull insurance, the primary problem raised was the way we compensate injured fishermen. Fishermen are considered seamen by the courts, and thus qualify for the Jones Act and related unseaworthiness remedies.

Congress passed the Jones Act, which applied to merchant seamen, in the 1920's. When the remedy was made available, there was no other remedy besides maintenance and care available to injured commercial fishermen. Courts all around the country struggled with the idea of whether or not fishermen were seamen. If they were not seamen, they did not qualify under most State workmen's compensation programs, and judges, really in an act of mercy, made them seamen, because otherwise they would get nothing for their injuries.

I might add that in all the countries we compete with in commercial fishing this is not the case. In Canada fishermen are covered under the Provincial workman's compensation system and the cost of that to the vessel owner is so low that in at least one case I am aware of the cost of P&I insurance is thrown in with the hull premium at no charge at all.

The tuna fleets that operate worldwide from other countries that our American tunaboats have to compete with all have a very different system, operating under national health insurance, where these huge claims are not in evidence and they are not paying these dramatic $10,000 a man P&I insurance costs for a crew of 17. Thus, we are not able to compete fairly in the international market. In 1975, as I said, we produced the draft bill. That bill did not go anywhere, for a couple of reasons, I think possibly because enough homework had not been done over what the comparative costs would be of a compensation system.

Second, there was a fear that legislation like this would not respect the traditional relationship between the vessel owner and the crewmember. This was not an employer-employee relationship. This is a joint-venture relationship, where if a trip does not make money, if the expenses exceed the income, the individual crewmember must chip in. That is not a standard relationship, and any benefit remedy we design has to take that into consideration.

Finally, in 1975, we were very much wrapped up in trying to get the 200-mile bill passed and we simply could not devote the time necessary to this problem.

From the period of 1976 to 1980, the period of high interest rates deflated the insurance problem. We were lulled into a false sense of complacency. By 1982, however, with interest rates declining, we began to see insurance companies beginning to raise their rates to more accurately correspond to the amount of money they were paying out. Their investment divisions simply were not making enough money any longer.

So what we are seeing to a certain extent in the hull and P&I increases is a response to different market factors within the insurance industry that we cannot do anything about. The one thing we can do something about, however, is the way we compensate injured fishermen.

I think the hull problem is going to correct itself through industry cooperation with, for example, the Coast Guard's fishing vessel safety initiative, and with the university fishing vessel safety centers. The few insurance companies left writing are vigorously enforcing whatever safety standards are available and there is a substantial effort being made in that direction.

I think we are much better off having the insurance companies use the private army of marine surveyors that are already out there to enforce responsible standards than asking the Coast Guard to get involved. I know they do not want to get involved because they have trouble inspecting the under 600 U.S. bluewater merchant vessel fleet. If you add on the 22,000 to 24,000-odd documented fishing vessels to their inspection burden, we will have to talk about a substantial increase to the Coast Guard's budget.

The only way to do that is through user fees and, quite frankly, I do not think the industry would be able to support the kind of user fees to operate such a very top-heavy system. Thus, I think we ought to leave that problem alone and support the self-help programs that are going on.

We are not looking for governmental intervention. However, I think it is absolutely essential that we make some kind of change in the way injured fishermen are paid when they are injured.

Notice I am not giving you a draft bill. I am not suggesting one alternative over another. The reason for that is that this industry, as you have heard today, is not like the automobile industry, where three corporate presidents can get on a conference call in Detroit and set industry policy for 1 million people. We are an industry that is composed of thousands of lobstermen in Maine and owners of multi-million-dollar tuna vessels with different interests that have trouble communicating among themselves.

What we have recognized over the past few months is that we need to work together with you, with Members of the House, with the Congressional Research Service, with the National Council on Fishing Vessel Safety & Insurance, to develop this kind of scheme. And the rough timetable I think we ought to be following is working on our research through the spring and developing some alternatives over the summer, so that we can come to you with something firm cooperatively, with all the groups working together in the fall, to come up with a long-term solution of the problem.

I think any proposed solution must have the support of the fishing industry, and now no one particular solution can be supported because we simply have not had the time to work out the numbers of what the different alternatives would cost. I do not think we can wait any longer, because it is reasonably clear to me that there is going to be perhaps only two companies left involved writing this kind of insurance by then, and we will be at the edge of the cliff by the fall.

I do not think we can develop the kind of responsible information you heard many of the witnesses calling for, today. People are interested. They think maybe this is the direction to go, but we clearly need some more numbers developed before we can sleep at night and recommend a solution.

So in summary, then, what I think we are asking for is your cooperation, your good offices, the help of the Commerce Committee staff, to work with members of the House Merchant Marine and Fisheries Committee staff, to work with the Congressional Research Service and members of the industry to cooperatively develop a solution within a reasonable time, like about 6 months, recognizing that if we do not do so we will not have a fishing industry to argue over in many parts of the country by this time next year.

Thank you very much for your time, Senator.

Senator TRIBLE. Mr. Nixon, thank you for your testimony today. I must tell you that I read "A Commercial Fisherman's Guide to Marine Insurance and Law" and I found it quite instructive.

I think your timetable you have put forth is a responsible one, and you have underscored the urgency of the problem.

In your judgment, it seems the problem lies in the legal system that provides really no-fault coverage and indemnity without real limitation. Is that a fair statement?

Mr. NIXON. Yes, sir; we have pretty much backed into the system we have now. In fact, your assessment of the legal system is quite correct. Although it is called a fault system, because of the strict liability nature of the unseaworthiness remedy, in effect we have a no-fault recovery, but with a pot of gold as we would have in a fault system. Typically, a no-fault system has a scheduled recovery involved. Here we have the worst of both sides.

Senator TRIBLE. In these cases, what compensation does the plaintiff's attorney generally receive? Is it a contingency fee?

Mr. NIXON. Yes; sir, they are almost universally working under the contingency fee. And typically, if a case is not settled, one-third of the amount recovered plus expenses, and if it does go to trial typically 50 percent of what is recovered plus expenses.

This has been a very serious factor. Kris Vehrs from Texas told me that a couple of years ago there were only two lawyers in Brownsville, TX, and now there are 13 and they are all working on cases for commercial fishermen. August Felando from the American Tuna Boat Association has told me that wherever his fleets go there will be a lawyer from a U.S. law firm at that port waiting to handle any cases that might walk off the boat.

It is a very serious problem. One of the things I resent particularly, having worked for fishermen's groups over the years, is that the money from these large recoveries that seemingly are making

fishermen rich are really helping to establish branch offices of law firms on every wharf around the country.

Senator TRIBLE. I used to be a trial lawyer. Sometimes I wonder whether I made a mistake.

Mr. NIXON. You are in an honorable profession.

Senator TRIBLE. I am still arguing to a jury. It is just a bigger one today.

In view of the fact that recovery is virtually assured under the Jones Act/unseaworthiness doctrine, is there any policy justification for these high contingent fees?

Mr. NIXON. Well, certainly the answer that the American Trial Lawyers Association would give you, sir, is that without a contingency fee system, equal access to the legal system is denied to everyone in the country. In fact, the contingency fee system means that if I want to I can retain the most well-known attorney in the country if my case looks good enough. That is the argument they give.

In fact, I do not believe it holds water any longer, and I think the conduct of the trial bar, as displayed in the rush to India, is frankly very disillusioning on the state of the legal profession today. The attorney in Gloucester, MA, who won what amounted to a $700,000 award for a broken arm announced to the New York Times after that case that:

> I do not even need to go to trial any more. I just call the insurance company up and tell them who I am, tell them I have got an injured fishermen, and they start talking numbers. I do not have to go to trial any more.

That kind of system, what it is doing to responsible fishermen, to responsible vesselowners, is putting them out of business.

The recovery system ought to be: first, fair to the crewmember; second, affordable to the vesselowner; and third, predictable to the insurance company so they will be interested in underwriting the business. The system we have now is not fair, it is not affordable, and it is not predictable. We have got to change it.

Senator TRIBLE. Historically, when a tort litigation system has been replaced with a no-fault compensation system, all parties have achieved some recognizable benefit. Here many would argue that crewmembers cannot lose in their present posture and therefore might not benefit from a change in the system.

How does one respond to that?

Mr. NIXON. I think the best response to that, Senator, is that if we do not make a change to the system the crewmembers will not have jobs. Vesselowners, like the Wells Scallop Co. that led off the hearing, will not be able to continue their fishing fleet operations, and they personally employ several hundred people. Those people will not be working. That is the most fundamental labor issue of all.

Furthermore, keep in mind the fact that relations are now so strained between the fishing industry and the insurance industry that when someone does have a legitimate minor injury and goes to a company and says: "Look, can I have a couple of weeks' wages, can I have my expenses," in many cases the insurance companies have really dropped the ball and have been afraid to take any action for fear they would be admitting liability. The fisherman

does not get anything for months, perhaps 1 year, until he is forced to sue the insurance company.

The kind of benefits recovery system we are talking about would provide an immediate guarantee of what a fisherman would receive if in fact injured in the service of the vessel. The system will provide a certainty that he would be taken care of and would not need to resort to the trial system.

Senator TRIBLE. Let me ask you this. Absent the cosmic solution of implementing a compensation system, would this problem be solved, either partially or completely, by a change in the present system to require that unseaworthiness claims be tried separately from Jones Act claims and tried before a judge and not a jury? In other words, are juries the problem or is the problem more broad-based?

Mr. NIXON. Take for example the situation in the tuna fleet. At least several years ago when tuna fishermen were making a lot of money, it is not terrbily difficult at all to trace a tuna fisherman's income over his life expectancy over the period of 20 years in recovering from this injury and come up with a very high dollar figure.

A judge will be faced with the same numbers. I do not think that pulling the jury system out of this is going to make that big of a difference. It would have some impact certainly. But I think a more fundamental change is called for.

I think, frankly, that that kind of a change would be more difficult to push through something like the Judiciary Committee. This would be seen as an insult to the jury system, and the jury system has its plusses and minusses, and I think the problem is really more the fact that workman's compensation or a defined benefits system works for 95 percent of the working people in this country, and there is no longer any reason why fishermen should not also fall under the same kind of a system.

There is perhaps an argument that can be maintained for the blue water seamen. We are not touching that issue. But for coastal fishermen, the argument just does not make any sense, if it ever did.

Senator TRIBLE. I appreciate your presence here today. We will stay in touch.

[The statement follows:]

STATEMENT OF DENNIS W. NIXON, MARINE AFFAIRS PROGRAM, UNIVERSITY OF RHODE ISLAND

Members of the Subcommittee, thank you for this opportunity to address an issue of critical importance to the fishing industry. My name is Dennis Nixon. I am an attorney, Professor of Marine Affairs, and Coordinator of the Graduate Marine Affairs Program at the University of Rhode Island. I have been conducting research in this area for the past four years and am the author of A Commercial Fisherman's Guide to Marine Insurance and Law.

The fishermen and leaders of fisheries groups here today have described the serious nature of the insurance problem facing their industry. The severity of its impact can only be compared to the devastating foreign fishing effort off our shores in the early 1970's which ultimately led to the passage of the Magnuson Act. The same type of sweeping change in law may be required to meet this new challenge and continue the development of the U.S. fishing industry.

THE CRISIS UNDER STUDY: 1957–1985

It is important to note that this is now the third time in recent memory that fishing vessel insurance has become costly and difficult to obtain. It is also the third time that hearings like this have been held in an effort to improve the situation. In the early 1950's the fishing industry encountered a major vessel insurance crisis. The federal government sponsored a study and survey of the problem which culminated in a two volume report, complete with case histories, analysis and recommendations. One of the report's strongest conclusions focused on the method for compensating injured fishermen:

. . . it disregards completely the financial, economic, and operational characteristics of the industry. Furthermore, the system in itself is unjust because it is wasteful and slow and it fosters misunderstanding and bitterness between employer and employees. Moreover, it encourages the use of dishonest methods by both parties because court awards often are not in proportion to the employee's injury or need.[1]

The authors suggested that some type of workmen's compensation might be the answer, and that a study of such a system should be undertaken.

A detailed study was not undertaken, however, until the early 1970's when the problem once again grew to crisis proportions. In January 1973, a nationwide conference was called on commercial fishing vessel insurance by the National Oceanic and Atmospheric Administration. There was a good discussion of the issues but the group was too unwieldy in size to develop a consensus.[2] They did agree, however, to form an Ad Hoc Group on Commercial Fishing Vessel Insurance to further study the issues and to recommend solutions to the commercial fishing industry. That group met for two years and released its report in June of 1976.[3]

The Ad Hoc Group devoted most of its attention to the personal injury question and concluded that an alternate liability system should be considered. They produced a draft bill, the "Vessel Safety and Fishermen's Benefit Act" which was introduced in the House of Representatives as H.R. 9716 on September 19, 1975. The bill would have provided a no-fault compensation system for vessel owners on an optional basis. The bill failed to gain support for three principal reasons: (1) vessel owners were still uncertain over the costs of a compensation system; (2) vessel owners feared any potential change in status of a crewmember from independent contractor or joint venturer status to that of an employee; and (3) passage of the Fisheries Conservation and Management Act of 1976 occupied the attention of the leaders of the fishing industry. Insurance premiums stabilized on their own in the late 1970's as insurance companies competed for premium dollars to invest during that era of high interests rates.

This latest version of the crisis is approximately a year old. It is like a cancer which has appeared for a third time. The first two outbreaks went into remission virtually on their own, but this third occurrence must be treated with the surgery of decisive action. From the Gloucester Times to the New York Times, from the Alaska Fisherman's Journal to the Wall Street Journal, the media has discovered that the fishing industry is faced with a serious problem. Unlike the earlier versions of this problem, however, a number of significant externalities have changed. If the problem is allowed to simply "work itself out" once again, many fishermen will be facing the same grim scenario of mortgage foreclsoure that family farmers presented to you last month.

NATURE OF THE PROBLEM TODAY: HULL INSURANCE

A quick look at the fisheries facing the most significant problems in hull insurance will show that either one or both of the following conditions exist: (1) the resource itself, through environmental factors or overfishing, is in decline; or (2) competition from foreign imports has had a negative impact on vessel profitability. This subcommittee does not have jurisdiction over either one of those issues, but they do relate to the current crisis faced by all commercial fishermen. Troubled fisheries, like king crab in Alaska or groundfish in Gloucester, have drawn attention to the

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[1] W.C. Danforth and C.A. Theodore. Hull Insurance and Protection and Indemnity Insurance of Commercial Fishing Vessels. Special Scientific Report—Fisheries No. 241 and 241 Supplement. U.S. Department of the Interior, Fish and Wildlife Service, (1957) p. 111.

[2] Proceedings of the Conference on Commercial Fishing Vessel Insurance, Washington, D.C. January 9–10, 1973. Editors G.H. Lyon and C.A. Theodore, National Oceanic and Atmospheric Administration, September 1973.

[3] Summary Report of the AD HOC Group on Commercial Fishing Vessel Insurance January 1973—May 1975 Editors G.H. Lyon and C.A. Theodore, National Oceanic and Atmospheric Administration, June 1976.

so-called "moral hazard" problem: when a vessel is insured for more than it can possibly bring on the open market because of one of the conditions mentioned above. The problem created by those who "cash out" from a fishery is that everyone left must pay the bill in increased hull premiums.

To a large extent, the moral hazard problem has corrected itself over the past few months through natural, admittedly radical, market forces. The companies that were badly burned in the widely reported vessel sinkings no longer write hull insurance for fishing vessels. The number of companies seeking fishing vessel business has declined by approximately 75%. Premium costs have soared from 25–75% as companies struggle to match premiums with losses.

More importantly in the longer run is the fact that the companies remaining, freed from the competition which held premiums artificially low, can now be more selective in the risks they underwrite. They can and should require that the vessels they insure be constructed, equipped, and maintained properly. They can look to the new voluntary safety standards being developed by the U.S. Coast Guard and the standards for fishing vessels suggested by the International Maritime Organization. Using their own private army of surveyors and inspectors, they can best determine the appropriate levels of construction and equipment required for the fishery intended.

An example of this private effort can be found in the calico scallop fishery off Florida. With an abundant resource and a low price per pound, vessels were being grossly overloaded to improve a trip's profits. Because of a significant number of floodings and capsizings of these vessels in the past few months, insurance companies have simply eliminated coverage under the hull policy for capsizes. Without the cushion of hull insurance to fall back on, those vessels are now loaded more carefully. A mandatory federal program would be extraordinarily expensive and duplicative of this developing private effort in vessel safety.

With regard to the foreign competition problem, it may be interesting to note how Canada supports the hull insurance of its fleet through their National Fishing Vessel Insurance Program. They insure over 9,000 vessels from 16 to 200 feet in length, the largest with a value of $2.4 million. The hull premium ranges from 1–7% depending upon all of the traditional rating factors and averages about 2%. But according to Jack Hall, the Director of the program, they need to charge about 3% on average to break even. The difference has been picked up by the Canadian taxpayer. The new Canadian government has indicated that they plan to "privatize" the program by March 1986—but the private sector insurance companies have shown no interest in getting involved. Hall predicts that the government will probably be forced to continue the program for lack of other markets.

NATURE OF THE PROBLEM TODAY: PROTECTION AND INDEMNITY INSURANCE

As noted in the "marine insurance crisis studies" discussed earlier, more serious than the admittedly expensive hull insurance problem is the fault system used for compensating injured fishermen paid for under the Protection and Indemnity, or P&I policy. Stunned by the ever-expanding doctrine of unseaworthiness and the ability of the admiralty plaintiff's bar to win ever-increasing verdicts, most companies have given up trying to raise rates and have dropped out of the business. Without the ability to roughly predict the dollar award for each class of injury, thus can be no actuarial basis for the rates charges.

No one can deny that fishing is a dangerous business. A total of 111 fishermen died in 1983, 36 in Alaskan waters; 242 fishing vessels were lost. According to the U.S. Coast Guard the fatality rate of U.S. fishermen is 7 times that of the average industrial worker. Safety programs must get those figures under control or no solution to the insurance problem will be possible.

Considering the particularly dangerous nature of the business, three objectives should be met by any injury/death compensation system: (1) it must be eminently fair to the fisherman or his heirs; (2) insurance against those losses must be affordable to the vessel owner; and (3) the system should be predictable enough to induce insurance companies to enter the market. The existing fault system using the Jones Act and the unseaworthiness doctrine no longer achieves any of those objectives for the U.S. fisherman.

The fault system may make sense on blue-water merchant vessels whose seamen spend time in foreign ports but makes absolutely no sense at all for the crew of coastal fishing vessels. Congress never determined that fishermen were seamen under general maritime law; courts gave them that status because they did not qualify for coverage under most state workmen's compensation systems and without it they had no remedy.

The most fundamental problem with the existing system is that it simply isn't fair. A fisherman should not have to hire a lawyer to get basic medical expenses paid. He shouldn't have to pay that lawyer a 30–50 percent contingency fee if he is successful. The system should not be so inconsistent and unpredictable that the damage award for the same injury before two different juries can and often does vary by a factor of 10.

A recent example of the trend in fishing vessel cases is *DiMercurio* v. *DiMercurio Fishing Corporation.* In October, 1981, a 20 lb. steel block fell 20 feet from the rigging of the eastern-rigged dragger *Racketeer* and broke skipper Mercurio DiMercurio's arm. DiMercurio's insurance carrier, New Hampshire Insurance Company, offered a $20,000 settlement for the accident, which left DiMercurio with a steel plate and five screws in his arm. DiMercurio hired lawyer Joseph Orlando and sued the DiMercurio Fishing Corp.—his own corporation, in which he owned 51% of the stock—for a more lucrative settlement from its insurance company—his insurance company. In February 1984, a U.S. District Court jury awarded DiMercurio $554,000 plus interest. Orlando described 1983 as DiMercurio's best year fishing, despite the broken arm. New Hampshire Insurance no longer insures commercial fishing vessels. Orlando has stated that he has not had to go to trial since—the insurance companies have settled every claim.

What have cases like this done to premiums for P&I insurance? If the coverage is available, it is very expensive. Perhaps the most extreme example is given by Mr. August Felando of the American Tunaboat Association. Over a five year period, annual insurance premiums to cover crews in the California tuna fleet went to $8,500 or $10,000 a man from $1,500. Those costs further handicap an already struggling fleet.

The solution to the problem is not new—it was first suggested in 1957 and formed the basis of the 1975 draft legislation. The fishing industry needs a no-fault compensation system designed for its particular needs. Under a compensation system, a greater degree of predictability is introduced and insurance companies could be induced to re-enter the market and provide insurance at competitive rates. Good risk management techniques coupled with group self-insurance programs would further stabilize premium costs.

The opportunity is there to correct the situation if Congress and the fishing industry are able to work together on this issue. But first, the fishing industry must work together to develop a consensus on the precise nature of the proposed compensation system. For better or for worse, the fishing industry is not like the auto industry where a local conference call in Detroit can set an industry policy affecting hundreds of thousands of workers. The fishing industry is extraordinarily diverse. Any change in the existing system is certain to have drawbacks for some members of the industry. The question is whether or not that should stop discussion of change. The fishing industry has been struggling intermittently with the issue for nearly thirty years. With your help, I hope that we will be able to at least initiate action in this Congress. Constructive debate can occur with a draft bill as a focal point. If this attempt fails, as it did a decade earlier, the fishing industry will only have itself to blame.

Thank you very much for your interest in this subject and for giving me the time to present my views. I will be continuing my research on this subject over the summer and would be honored to provide any further assistance this Subcommittee might require.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR STEVENS AND THE ANSWERS

Question. Would required education and safety programs and required vessel inspections significantly decrease P&I rates?

Which element is more important in increasing safety and decreasing premiums—inspections or safety education and training?

Answer. The only way to achieve a decrease in P&I rates is to reduce both the number and size of P&I claims. It is not at all clear, however, whether mandatory vessel safety, education, or inspection programs would have a significant positive impact on either the number or size of P&I claims. It probably would not make the situation any worse, but there is no guarantee that we would see a dramatic improvement.

In an effort to compare the loss record of the U.S. fishing fleet with the record of a highly regulated fleet, LCDR Tony Hart and Frank Perrini of the U.S. Coast

Guard examined the loss ratios for the U.S. and British fleets for the period 1975–1982. Their results are found in the table below.

COMPARISON OF U.K. AND U.S. FISHING VESSEL LOSSES, 1975–82

[Loss ratios per 1,000 vessels]

Year	United Kingdom	United States
1975	7.0	7.0
1976	5.2	7.1
1977	5.6	5.7
1978	5.1	3.1
1979	5.8	6.8
1980	5.8	6.0
1981	7.1	7.6
1982	7.4	8.2

The table demonstrates that the loss ratios are not significantly different for the two fleets. Those loss figures impact on both hull and P&I rates, since approximately 75% of the deaths in the industry are the result of vessel losses. Thus the number of claims is similar, despite certification and inspection programs. The significant difference is in the size of the individual P&I claim.

It is also worth noting that the U.S. distant water tuna fleet is composed of vessels over 200 gross tons and thus must comply with Coast Guard construction, inspection, and manning requirements. Despite the mandatory nature of those safety requirements, however, the California tuna fleet has the highest P&I costs of any fleet in the country. Once again, the high cost is more a function of the size, not the frequency of the claims.

Both elements are vitally important but should be a function of a cooperative program between the government, the fishing industry, and the insurance companies. Such a program is already underway and should be given additional support. The U.S. Coast Guard, through its Fishing Vessel Safety Initiative is currently preparing recommended safety and equipment standards in consultation with the fishing industry. Compliance with those standards would be managed through the existing mechanism of the insurance company survey. More difficult stability questions could be answered at the Fishing Vessel Safety Bureaus already established at the Universities of Rhode Island and Washington.

The important thing to remember about both the inspection and safety issues is that any effort must be seen as a long-term commitment to a cooperative effort. A mandatory program will only encourage individuals to find loopholes and achieve minimum compliance.

Finally, the mandatory inspection of the approximately 32,000 fishing vessels in this country by the U.S. Coast Guard would be enormously expensive and probably impossible without a significant increase in Marine Safety Office personnel. That cost, if passed on to the fishing industry through a user-fee system, would be yet another burden for the U.S. fisherman to bear. Through his annual premiums, the vessel owner is already paying for the insurance company inspection and survey. Rather than duplicate that effort, a better expenditure of funds would be to make that process more effective.

Question. You mentioned that the 1975 legislation included an "optional no-fault compensation system." Please explain (for the record if necessary) the nature of this system, including in particular the optional element.

Answer. This question is best answered by referring to the official description of the draft bill prepared in 1975. The bill was developed "to provide for a commercial fishing vessel safety certification program and fishermen's benefits for personal injuries, illnesses, and for dependents benefits." It is composed of two titles.

Title I—Fishing Vessel Safety authorizes the Secretary of Commerce to implement programs which would provide for the following:

(a) The promulgation of safety and health standards for commercial fishing vessels which could be voluntarily adopted by vessel owners.

(b) Vessel inspections at owners' cost and crew member examinations to determine whether the vessel and crew are in compliance with the safety and health standards which are promulgated under this title.

(c) The certification of vessels which are in compliance with safety and health standards.

(d) Guarantees of loans made to vessel owners by private lending institutions for the purpose of modifying vessels in order to meet safety and health standards.

(e) Safety training for voluntary participation by crew members in the furtherance of safety and health standards.

(f) Fishing industry safety advisory committees which shall be comprised of representatives of commercial fishing vessel owners, fishermen's unions, marine insurance underwriters, and marine surveyors.

(g) Accident reporting, investigation, and analysis to include mandatory accident reporting by vessel owners who have received certification or a loan guarantee.

Title II—Fishermen's Benefits authorizes the Secretary of Labor to implement a program which would provide for the following:

(a) A personal injury and death insurance liability system for commercial fishing vessels in place of the current system which is under Federal maritime laws.

(b) That every commercial fishing vessel owner with one or more employees be liable without regard to causation by fault or unseaworthiness for benefits for disability or death which occurs to an employee while on board a commercial fishing vessel or while engaged in carrying out the duties of a commercial fishing vessel.

(c) A system of income payments to disabled fishermen until they are fit for duty and to dependents of fishermen who are killed in the service of a commercial fishing vessel; free medical and rehabilitation services to fishermen in their choice of either private or U.S. Public Health Service facilities; and burial expenses in death cases.

(d) A system of records and reports which will provide data on the number of kinds of accidents and injuries which are occurring on U.S. fishing vessels.

(e) That every commercial fishing vessel owner secure benefit payments by obtaining and keeping insurance or by furnishing the Secretary proof of ability to pay benefits on his own.

(f) A fixed schedule of benefits to be paid in disability and death cases, thereby substantially limiting the liability of the vessel owner for personnel aboards his vessel.

(g) Establishment of procedures for resolving contested rights to benefits by either the fishermen or the vessel owner.

(h) The formation of an advisory committee consisting of vessel owners, fishing employees, insurers, and others.

Basic Principles and Concepts of the Bill: The bill was structured on basic principles and concepts which are reflected in both the vessel safety and fishermen's benefits titles. Some of these principles and concepts are listed below. In addition comparisons are made between the current system and the systems of the bill.

(1) The social system dictates that all fishermen should receive adequate, fair, and timely compensation benefits when suffering from a service-connected injury or illness and that their dependents should be compensated at a socially acceptable level in the event of accidental death.

Under the present system many fishermen do not receive adequate compensation benefits when injured.

Under the draft bill every fisherman would be covered by provisions of Title II, and every vessel owner would be liable for his employees regardless of fault (Sec. 208, 209, 210, 212, 213, and 214).

(2) Ample liability insurance coverage must be available to the owners of fishing vessels and at minimum possible cost.

The present system has resulted in some very weak insurance markets and insurance concellation. P and I insurance costs are very high in some areas and are increasing rapidly.

The proposed bill would make insurance available to every owner (Sec. 225(c)). It would increase competition, lower insurance costs on a case basis, and help create insurance stability in the fishing industry.

(3) A properly functioning fishing vessel insurance system should not permit escapage of funds; that is, no premium should be diverted to channels other than for payment of benefits and system managment.

The proposed system would virtually eliminate settlement of cases through litigation. Procedures within the system are provided to settle disputed cases (Sec. 218 and 219).

Fees would be set by the Secretary for representatives of either the employee or employer in hearings (Sec. 223(b)).

The proposed system would enable risk evaluation to the point that carriers costs would be substantially reduced. Other costs to the system would be reduced by transferring certain functions to the government.

(4) The insurance liability system of fishing vessels should be kept abreast of social change in the nation as a whole, without impairing the competitive position of the fishing industry.

The current system of claims litigation is obsolete. It is time-consuming and costly. Benefits should be predetermined and uniformly applied to all concerned.

The proposed system would adjust benefits so that they are more in line with other compensation systems and in accordance with the needs of employees and their families. Benefits would be increased in permanent total (PT) and fatal (F) cases and decreased in temporary total (TT) and permanent partial (PP) cases.

The bill would provide a means of changing the benefit schedule based on loss experience (Sec. 231(c)).

(5) An insurance system should provide for stability and uniformity in the process of underwriting risks as well as processing claims.

The proposed system prescribes a claims filing system (Sec. 216), claims paying system (Sec. 217), and for the settlement of disputed claims (Sec. 218 and 219). These systems would be standard throughout fisheries.

(6) Information on loss experience, accidents, injuries, and fatalities should be available.

At present there is lack of information on accidents, injuries, and loss records. The availability of this information would greatly facilitate risk management.

The draft bill would provide for accident investigation analysis and reporting (Sec. 109); records and reports of injuries and deaths (Sec. 224); and reports of loss experience and insurance rates and premiums (Sec. 228).

(7) Benefits should be based on the earnings of the injured fisherman as well as the earnings of fishermen in each fishery.

Fishermen's benefits are based on the lowest of the following (1) The fishermen's earnings or (2) the average earnings of fishermen in each fishery. This method provides for variation in benefits according to the fishermen's or the fishery average (Sec. 212, 214, and 215). It follows that the vessel owners' insurance costs would be in proportion to earnings of the particular fishery.

(8) The liability of vessel owners should be limited to the benefits specified by the system.

Under the current system, there is no limit to an owner's liability. It is an open-ended system. This is poor business since one large settlement could absorb all of an owners assets and lead to bankruptcy.

The proposal limits the owner's liability to the extent of the benefits schedule (Sec. 206).

(9) The system should eliminate settlement of claims through the litigation process.

Provisions would be made for the settlement of disputed claims within the system. The following steps would apply (Sec. 218 and 219);

(a) One or more informal discussions between the parties and a case review officer.

(b) An informal hearing before the Deputy Commissioner.

(c) A hearing before an administrative law judge.

(d) Benefits Review Board consideration.

A liability exclusiveness state is provided (Sec. 206).

(10) An integral part of a risk management program should be a safety program designed to minimize injuries and the loss of life and property.

Title I provides for a vessel safety program with the following elements:

(a) Safety and health standards.

(b) Inspections and examinations.

(c) Certificates of compliance.

(d) Loan guarantees.

(e) Safety training programs.

(f) Safety advisory committees.

(g) Accident reports.

(11) An insurance system should operate in a free market composed of insurance carriers and vessel owners, with a minimum of government interference.

This bill would provide for privately negotiated insurance contracts between carriers and vessel owners. Claims would be settled within a prescribed set of rules, with no government involvement except in disputed claims. Disputed claims would be resolved with government assistance (Sec. 227).

(12) Every employer should be liable to his employees, without regard to causation by fault of unseaworthiness, for benefits due to injury or death of his employees.

This bill provides for no-fault obligation by vessel owners (Sec. 202).

(13) The system should effectively exclude benefits for injury or illness not directly related to actual employment.

The intention of the bill is to limit owner obligations to those injuries and deaths which occur while the fisherman is on board a fishing vessel or when he is off of the vessel, but then only when he is engaged directly in duties associated with the vessel (Sec. 202(b)).

(14) An insurance system should support favorable labor-management relations.

The present system creates employer-employee problems in that the injured employee must seek compensation directly from the employer and the settlement is very often a negotiated figure.

The bill would prove for predetermined benefits, and settlements are usually automatic and impersonal. It would virtually eliminate the confrontations which occur under the current system (Sec. 217).

(15) A properly functioning system should provide for periodic evaluation and revision when justified of benefits on the basis of the loss experience of insurers.

A provision of the bill would direct the Secretaries of Commerce and Labor make an annual report to Congress containing recommendations for changes in benefits based on changes in loss experience (Sec. 231(c)).

(16) Insurers should cooperate in a reinsurance plan to cover poor risks.

At present some owners cannot obtain P and I insurance at affordable costs. Under the provisions of the bill, all carriers participating in the program must agree to write insurance on all owner-applicants and to share in losses (Sec. 225(c)).

(17) The existing legal remedies, the Jones Act and maritime laws, of an injured fisherman should be available as a remedy where his employer fails to secure payment of benefits as required by the prescribed system.

The draft bill does not eliminate the current federal laws providing for fishermen's rights, including the Jones Act. It does provide for the right of a fisherman to sue under the laws if an owner fails to fulfill his obligations [Sec. 206(b)].

Question. I understand that several years ago a study was conducted comparing potential workers compensation costs and benefits with costs and benefits under the present tort litigation system, and I understand that you have recently applied for Sea Grant funds for a similar study. In a nutshell, if possible, what were the earlier findings, and what factors have changed to lead you to want to repeat this study?

Answer. The results of the comparative analysis conducted in 1975 are best expressed in the attached table which was part of the earlier study. (p. 10) In general, the consensus of the 1975 study group was that fishermen would definitely be better off under Model 3 (the draft legislation) than under the present system; vessel owners would ultimately pay lower premiums, and there would be greater equity of benefits among disabled fishermen.

My interest in repeating the study is that serious policy recommendations cannot be made today based on data that is ten to fifteen years old. Because of a substantial increase in the amount per claim paid in recent years, I suspect that the draft legislation will look even better today than it did in 1975.

Question. Of the total increase in P&I rates during the past five years, roughly what percent is attributable to the following factors:

1. Increased medical expenses following the closure of the public health service hospitals.

2. A greater number of jury awards and settlements.

3. A larger recovery in each jury award or settlement.

4. The need for insurance companies to generate additional cash to make up for a lower rate of return on investments.

5. Any other factors.

Answer. Nationwide, the closure of the public health service hospitals has not had a major impact since the facilities were often not located near fishing ports. It did have an impact, however, in ports like New Bedford where a hospital was conveniently located and often used by commercial fishermen. The net effect, therefore, was distributed unequally but relatively minor.

2. Reliable statistics are not available on a national basis which would indicate that the number of jury awards and settlements has increased. A study performed by the American Tunaboat Association in 1982 showed no substantial increase in the number of federal or state court suits for personal injury in the 1971–82 period.

3. There are also no reliable national statistics which indicate that larger recoveries are responsible for P&I statistics. There is substantial evidence to support that view, however, with record-setting verdicts appearing each year. Several of the com-

panies previously involved with the P&I market have cited dramatically increased jury awards as their principal reason for withdrawal. The fact that those involved with the industry perceive an increase in jury awards is in itself one of the causes for the higher P&I rates. This is one of the areas I will be addressing in my study this summer.

4. Besides the increase in jury awards discussed above, the other major factor in the recent rate increases is the fact that the investment returns on premium dollars have dramatically declined since the period of peak interest rates several years ago. Ironically, a fisherman struggling to make a living with an expensive vessel mortgage several years ago was enjoying artificially low cost insurance, subsidized by the banks paying high interest rates to the insurance companies investing their premium dollars. Today, with the decline in lending rates, the insurance companies are earning less and must charge more to balance premiums and losses. Fishermen have the unenviable choice of high interest rates and cheap insurance or low interest rates and expensive insurance!

COMPARATIVE ANALYSIS OF PAYMENTS TO FISHERMEN OR DEPENDENTS FOR DISABILITY AND DEATH CASES UNDER ALTERNATIVE INSURANCE SYSTEMS USING THE AMOUNT ACTUALLY PAID UNDER THE CURRENT SYSTEM AS A BASE, 1975

[Dollars in thousands]

Type of disability and death case	Number cases involved	Present P&I system		U.S. longshoremen and harbor workers compensation system		Model 2		Title II of H.R. 9716 (model 3A)	
			Percent		Percent		Percent		Percent
Temporary, total cases	234	$829.0	100	$402.0	48	$439.0	53	$392.0	47
Permanent, partial cases	53	693.0	100	748.0	108	430.0	62	455.0	66
Permenent, total	6	156.0	100	1,122.0	719	417.0	267	318.0	204
Fatalities	17	240.0	100	3,032.0	1,263	1,352.0	563	831.0	346
Other	6	62.0	100	0	.....	0	.....	0	.....
All cases	316	1,980.0	100	5,304.0	268	2,638.0	133	1,996.0	101

Source: Primary data from the records of insurance brokers and marine insurance companies. Included cases from fisheries as follows: Northeast, Gulf Shrimp, Menhaden, Tuna, and the Northwest. Based on cases which are mostly settled in 1970, 1971, and 1972.

5. Another factor which has had an impact is the declining competition in the market. The combination of the two factors discussed previously has drastically reduced the number of companies accepting new P&I business. With competitive factors all but eliminated, the remaining companies have much greater "pricing freedom."

Question. In some parts of the country (principally New England) fishermen's associations purchase P&I insurance or self-insurance, provide group medical coverage, and enforce safety restrictions. In your opinion, would such an arrangement work throughout the country, and to what extent would it solve the P&I problem?

Answer. It is important to distinguish between group and self-insurance group programs. A simple group program links fishermen from a common port or fishery and shifts some of the administrative burden of providing insurance from the company to a fishermen's cooperative or association. With the staff of the cooperative handling routine billing, inspections, claims, etc., the company is able to reduce its overhead costs and pass on its savings to the fishermen. Since the cooperative typically has low operating costs, there is a net savings for the individual fishermen.

A self-insurance group program is more complex and expensive to establish. Fishermen are, in effect, establishing their own mutual insurance company which involves pledging capital and the willingness to gamble it on the safety records of other fishermen in the port. The few successful self-insurance group programs in the country were started many years ago when reinsurance costs (to protect the pledged capital) were significantly less. In today's market, a program of this type would be very difficult to establish.

Group programs, on the other hand, are widely used in New England and the Northwest. Their operation has generally been successful and their use should be encouraged. Their primary benefit is through the reduction of overhead costs. They are not the complete answer to the problem, but their increased use is a healthy development. Groups which are selective about membership and safety standards can demonstrate superior loss experience to their insurance underwriters and re-

ceive premium reductions. Of course, those that are excluded from membership in one of those groups may end up forming a high-risk pool with exorbitantly high rates.

Question. Several witnesses have endorsed a proposal to use foreign fishing fees to establish a reinsurance fund. Is this a good idea? Why, and to what extent would it solve the crisis?

Answer. Reinsurance by the federal government should only be considered as a last resort. It would take virtually all of the capital in the Fisheries Loan Fund to have much of an impact nationally in reinsurance of fishing vessels. Operation of such a fund at below market prices would simply be a subsidy for the fishing industry. If a subsidy is the objective, there are many ways to provide a subsidy that would be less complex and require less administrative overhead.

The Canadian government, which has run a vessel insurance program since the 1950's, is now attempting to return that program to the private sector. This experience should be fully analyzed before we propose to do essentially the same thing.

Question. I have also heard suggested a system where each injured fishermen would be compensated under a no-fault system, but would retain a right to sue if he could demonstrate either (1) negligence or (2) gross negligence on the part of the operator. Do you think that such a system might have merit, or would it be too closely?

Answer. In my view, such a system would preserve the worst aspects of the existing system and add to it the costs of a no-fault system. Both administrative and claims costs would likely increase.

Question. One of the findings in the report of the Ad-Hoc Group on Commercial Fishing Vessel Insurance was that, on average, claims paid under the Longshore Act were higher than comparable maritime judgments or settlements. Today, Stevedore companies pay as much as $70 per $100 payroll for Longshore Act coverage. Employer contributions are also high for hazardous industries under State worker compensation plans. Have you or anyone else evaluated the costs of the present system compared to the alternatives?

Answer. The cost comparison was made in 1975 and is expressed in the table presented in answer #3. I will be reevaluating those cost figures as part of my study this summer.

Question. Who would bear the start-up and administrative costs associated with a new workers compensation system? What is the magnitude of these costs?

Answer. Start-up and administrative costs would be the responsibility of the federal government, which already administers several compensation programs through the Department of Labor. There is not, at present, an adequate statistical base to determine the magnitude of those costs.

Question. The fishing industry has been divided in the past over solutions to the insurance problem. What level of agreement is there now, in your opinion?

Answer. The last crisis which brought the fishing industry together on this subject was in 1975. All will agree that the current situation is worse with no relief in sight. At present, there is no agreement over a solution because all of the options have not been developed and investigated. However, there is general agreement to support a new alternative if it satisfies three major conditions: (1) it is fair to the individual fisherman; (2) it is affordable to the vessel owner; and (3) it is predictable for the insurance industry. With the cooperative effort of the federal government, the fishing industry, and the insurance industry, I believe that a consensus will be achieved on an alternative this fall.

Question. Prior witnesses have raised concern about non-meritorious injury claims under the present system. Critics of worker compensation say that bogus claims are a huge problem because of the no-fault nature of the system. Do you think there would be any improvement of this problem if we changed systems? Why?

Answer. Both systems have the potential to work poorly. However, aggressive risk and claims management practices can eliminate many of the problems in a compensation system. The current system is a fault system in name only; it is virtually impossible to lose a case based on the unseaworthiness remedy. Instead of a scheduled payment system, however, the amount of damages awarded are based on the skill of the trial attorney arguing the case. In summary, any alternative could be as bad as the present system if we let the system get out of control; on the other hand, a scheduled system has the potential to operate more fairly at less cost.

Question. You stated that safety programs are necessary to get casualty rates under control, otherwise no solution to the insurance problem will be possible. What do you suggest be done in this regard?

Answer. See answer #1(B).

Senator TRIBLE. With that, we will bring the hearing to a close. Thank you very much.

[Whereupon, at 3:17 p.m., the subcommittee was adjourned.]

50-498 0 - 85 - 3

FISHING VESSEL SAFETY AND INSURANCE

THURSDAY, OCTOBER 10, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:00 a.m. in Room SR-253, Russell Senate Office Building, Hon. Paul S. Trible, Jr., presiding.

OPENING STATEMENT BY SENATOR TRIBLE

Senator TRIBLE. The hearing will come to order.

Ladies and gentlemen, I am pleased to welcome you. This morning the Merchant Marine Subcommittee will again examine the problem of escalating commercial fishing insurance rates and assess potential solutions. As you know, the subcommittee previously held a hearing on this issue last March.

At that hearing, fishermen from every region of the country testified to the severity of the vessel insurance problem. It is rare when this nation's diverse commercial fishing industry can speak with one voice, but they have and they are speaking with one voice about this very real problem.

Enormous insurance rate increases are a major industrywide crisis. General liability insurance is costing more as the insurance industry struggles with the problems of escalating jury awards and lower investment returns. The life of the fishermen has been a further complicating factor. Fishery is an inherently hazardous enterprise and the unseaworthiness doctrine has developed into virtual absolute liability for vessel operators. As a result, protection and indemnity premiums have skyrocketed for all fishermen. Our fishermen, who have been suffering from declining stocks and increased foreign competition, may be forced by the dramatic jump in insurance premiums to tie up their vessels. P&I insurance is often unavailable to fishermen at any cost. This situation is intolerable.

The insurance problem is not limited to the marginal high-risk operators. Some of the safest fishing companies are feeling the heat. For example, Wells Scallop Company in Seaford, VA, which has an exemplary safety record, received P&I quotes this year which were 44 to 67 percent above last year's already-high rates. The company's manager recently wrote to me and I would like to quote from his letter:

> We have no way to combat these skyrocketing P&I rates. At this point the only alternative we have is to scale down our hull coverage so that we can afford to pay the P&I premiums. However, if the rates continue to increase at the same percentages, we will not be able to operate next year.

These problems and potential solutions will be discussed in further detail at this hearing. There is some progress being made. Currently the Coast Guard is initiating a program to improve fishing vessel safety. These are voluntary measures that hold the promise of reducing accidents and making fishing vessels a more attractive insurance risk.

I know insurance brokers and underwriters are also concerned about the problem and investigating ways to make coverage more affordable.

The Congress is acting as well. We have enacted bills to improve maritime safety, including my measure to expand thermal suit requirements. Yesterday, Congressman Bateman introduced legislation requiring emergency position indicating radio beacons on oceangoing fishing vessels, and I will introduce an identical bill in the Senate.

More must be done, though. This problem requires a concerted effort by Congress, the Coast Guard, the National Marine Fisheries Service, the insurance and the fishing industries.

In this regard, the Senate Commerce Committee is working closely with the House Merchant Marine and Fisheries Committee. The House subcommittee is holding a hearing on vessel insurance tomorrow in New Bedford, MA, at which Dennis Nixon will testify. I know the insurance problems have kept Mr. Nixon busy for the last few months and we appreciate his efforts and those of others here today.

While our previous hearing focused on the issue from the perspective of the commercial fishermen, today we will hear from representatives of the Government and the insurance industry itself. I look forward to exploring and advancing solutions to the problem.

Senator Hollings has asked to have his statement included in the record.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, it looks like the insurance situation for my South Carolina shrimpers and other fishermen around the country hasn't gotten better since the Commerce Committee's last hearing on this issue six months ago. For that matter insurance problems seem to be everywhere—municipalities, day care centers, manufacturers, obstetricians, hazardous waste disposers, satellite owners, and truckers are all having difficulty finding affordable coverage.

On the South Carolina coast 90 percent of our shrimp vessels are 10 years or older. But I'm told you can't find a single insurance company that will provide hull insurance for shrimp boats that old. There is still one company that will underwrite vessels under 10 years old. However, that company protects itself by not covering fishing trips beyond Georgia and South Carolina and limiting its hull risk to $50,000.

Insurance availability has become so important that we are now seeing prospective buyers of shrimp vessels demanding that insurance guarantees accompany any sale. And a number of shrimp boats are tied to the dock because their mortgage holders have the right to foreclose if the boats go to sea without insurance.

Mr. Chairman, the last hearing focused a good deal on the costs of "protection and indemnity" (P&I) coverage. P&I insurance is not yet a big problem in my state, possibly because of our smaller crew sizes. But, as I have said, our problems with hull insurance are serious. I look forward to hearing from today's witnesses to see whether there is anything sensible for the Congress to do in addressing these hull and P&I insurance problems.

Senator TRIBLE. Without further ado, then, let us turn to our first witness. Our first witness comes from the Coast Guard, Commodore J. William Kime, Chief, Office of Merchant Marine Safety, United States Coast Guard.

Commodore Kime, you are most welcome. Your statement will be made a part of the record in full. You are invited to read that statement or summarize your testimony.

STATEMENT OF COMMODORE J. WILLIAM KIME, CHIEF, OFFICE OF MERCHANT MARINE SAFETY, U.S. COAST GUARD, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY CAPT. GORDON G. PICHE, CHIEF, MARINE TECHNICAL AND HAZARDOUS MATERIALS DIVISION, OFFICE OF MERCHANT MARINE SAFETY

Commodore KIME. Thank you, Mr. Chairman.

I have with me this morning Capt. Gordon Piche, who is Chief of our Technical and Hazardous Materials Division, and he is here today wearing his hat as Chairman of the Coast Guard's Fishing Vessel Safety Task Force. And we are both pleased to be here to testify on this very important issue, and I would just like to summarize my formally prepared statement, Mr. Chairman.

It is generally acknowledged that commercial fishermen are engaged in one of the most hazardous of all occupations. It has the worst safety record of all U.S. industries. Our casual data, obtained from our computerized file at Coast Guard headquarters, are compiled from reports of casualties and personnel accidents submitted to the Coast Guard by vessel owners, agents, masters or persons in charge of a fishing vessel, as required by Title 46, Code of Federal Regulations.

Fishing vessel population data are obtained from Coast Guard vessel documentation files. We estimate there are some 32,000 documented commercial fishing vessels. Recent casualty statistics show vessel losses for documented fishing vessels over 5 net tons averaged nearly 250 per year between 1981 and 1984. This is a jump from the previous 10 years, when losses ranged between 150 and 200 each year.

Loss rates of large—and by "large" I mean vessels, fishing vessels over 100 gross tons—are five to seven times as great as loss rates for U.S. oceangoing cargo ships. And the death rate for fishermen is seven times the national average for all industry groups. Between 1981 and 1984, an average of 84 lives per year were lost.

Vessel sinkings and loss of life incidents are readily known to the USCG because of our involvement in the related search and rescue

missions and investigative procedures; therefore, we feel these statistics are more reliable than personnel injuries and vessel casualties not involving deaths or total vessel losses. Casualties involving State-numbered boats used in commercial fishing are not considered in the analysis as the population is unknown.

Human error plays a major role in fishing vessel accidents. Calculated to be a direct or indirect cause in 80 percent of the casualties, it generally results from a lack of knowledge of vessel operations that do not relate to the business of catching fish. This includes poor watchkeeping practices and procedures, lack of preventative maintenance, navigational errors, rules-of-the-road violations, and a general lack of understanding of the various forces acting upon the vessel, especially those affecting stability.

Foundering, flooding and capsizing are the greatest contributor to losses. Casualty data show that they contributed to approximately 43 percent of all losses. Some losses due to capsizing can be traced directly to the manner in which the vessel was operated. In a number of casualty reports, the vessel met the IMO recommended stability criteria at the time it was put in service and had stability loading information; however, the operator neglected to load or operate the vessel according to these restrictions.

Fires and explosions are the second major problem area. Approximately 25 percent of the losses fall into this category. Over two thirds of these casualties occurred in the engine room spaces due to machinery or electrical failure. A general lack of vessel "housekeeping" also contributed.

Analysis of the causes of casualties suggests that many could have been prevented or their severity diminished if more precautions had been taken or if the vessel had been operated more prudently. Fire and smoke alarms installed in the engine spaces would have, in many cases, alerted the crew to a fire in its early stages. Similarly, a bilge alarm would have alerted the crew to early flooding of water into the vessel.

Faced with increased competition for limited resources, operators are also embarking on voyages under conditions which would otherwise dictate staying in port. Vessels routinely encounter conditions which severely tax their capabilities. Losses are inevitable.

Some have suggested a mandatory licensing and inspection program. While a licensing/certification program is attractive to some, since it provides a means of enforcement, the USCG is convinced that, for this partticular class of vessel and personnel, a voluntary program can provide an equivalent degree of safety in a much shorter time. To this end, the USCG wants to create a framework through which industry can improve its safety record without Government regulation. If a mandatory licensing and inspection program were mandated by Congress, the USCG would need a substantial increase in resources. For example, in the area of licensing it would take at least 4 years to implement a program and issue approximately the 67,000 licenses that would be required. Our total

licensing activity would increase by 67 percent per year. Inspection and certification of fishing vessels would increase the total number of vessels in that category by 200 percent.

In February of 1984, Admiral Gracey, Commandant of the USCG, recommended to the Secretary of Transportation a fishing vessel safety initiative to reduce the number of casualties in the uninspected commercial fishing vessel fleet. The Secretary endorsed the initiative, and formulation of a safety program began in the spring of 1984. The fishing vessel safety program has evolved into a completely voluntary program. The current fishing vessel safety and insurance crisis has helped to create an atmosphere in which our voluntary program can be effective in reducing casualties and losses. A two-pronged approach is being pursued; voluntary vessel standards, and a safety awareness and education program.

The goal of our fishing vessel safety program is to reduce the number of uninspected commercial fishing vessel casualties by not less than ten percent by 1991, without a net increase in the current level of overall Coast Guard commercial vessel safety resources. Under the direction of the Office of Merchant Marine Safety in Coast Guard headquarters, Mrs. Dole's Secretarial Safety Initiative is being developed by a fishing vessel safety task force which Captain Piche chairs.

With her strong support and approval, the initiative has developed into a two-phased voluntary program: voluntary vessel standards and a safety awareness and education program.

Voluntary standards consist of a series of five Coast Guard navigation and vessel inspection circulars or NVIC's. They are technical in nature and written for the fishing vessel designers, builders, and outfitters. The NVIC's cover topics such as radio and shipboard navigation equipment, stability, protection of crew, and lifesaving equipment, fire protection, and hull machinery, and electrical installations.

Feedback to date, Mr. Chairman, on these documents has been totally favorable. I have a copy with me of each NVIC and I request that they be entered into the record as part of our testimony.

Senator TRIBLE. It is so ordered.[1]

Commodore KIME. Mr. Chairman, this is our first attempt at these standards and we are now receiving feedback, and this will all be considered prior to final promulgation of these as proposed voluntary standards some time next summer.

The safety awareness and education program consists of the development of a fishing vessel safety and health guide written for fishermen. The guide will contain chapters which parallel the vessel standards, but with more emphasis on pictures and diagrams for ease of both teaching and learning.

[1] The material has been retained in the Committee files.

The guide is being developed in a joint effort between the North Pacific Fishing Vessel Owners Association, or NPFVOA, and the Coast Guard task force, with funding broken down as follows: 20 percent by NPFVOA, 37 percent from the Coast Guard, and 43 percent from the Department of Commerce from a Saltonstall-Kennedy grant.

Additionally, Coast Guard personnel are acting as technical advisors to the contractor working on this guide and are providing him with drafts of chapters on subjects in which we have expertise, including rules of the road, rudiments of navigation, watchkeeping, fire and damage control, stability, safety and survival equipment, and Coast Guard procedures and standards.

The final product will need some tailoring for each part of the country for the particular fishery concerned. Therefore, other fishing vessel associations will need to be involved. The guide will be distributed primarily by the vessel owners associations and the NOAA Marine Advisory Services National Network.

The task force is involving fishing vessel interests to the fullest extent possible. They have talked with personnel representing fishing vessel owners associations, insurance underwriters and brokers, marine surveyors, other Government agencies such as NOAA and the National Marine Fisheries Service, Congressional staffers, Coast Guard districts and field units, and the NOAA/Sea Grant University Fishing Vessel Safety Centers.

It is through the latter and other private institutions that fishing vessel safety courses will be developed using the safety guide as a course outline. These local institutions will be able to expand on the contents of the guide and offer the course at the local level tailored to particular fisheries' concerns.

In summary, Mr. Chairman, we feel our voluntary program will meet the needs of industry. That is, it would be the framework that local fishing and insurance groups can use to ensure a reasonable level of safety and reduce the casualty figures. The program can be implemented in a relatively short time and have an immediate impact.

The industry is willing to do something now, and the Coast Guard is making its knowledge and experience with vessel safety available in a cooperative effort with the industry. We believe the voluntary safety program will work.

Mr. Chairman, that concludes my prepared statement. We would both be pleased to answer any questions you might have.

Senator TRIBLE. State for me very briefly and specifically how these voluntary initiatives on your part will be used on a practical basis by fishermen? You are putting together printed information which spells out ways in which to make the operation of vessels safer and you would propose that people will read that?

Commodore KIME. That is what we are attempting to do, Mr. Chairman. The NVIC's that I mentioned are technical standards aimed at vessel designers, builders, and this is meant—in developing

these, we have drawn very heavily from regulations that we have developed for other industries to ensure safety in the areas that I enumerated. We feel that where possible, these can be used to retrofit where there is not significant cost involved, and hopefully they will be included in the design specifications for new fishing vessels in the future.

We have sent these out to the public. We have gotten over 40 comments, including those from vessel designers, naval architects, and it is for those people that these guidelines are indicated.

We have taken those same subjects and developed or are in the process of developing the fishing vessel and health safety guide around these same subjects. We have simplified it so it can be used both for ease of teaching and learning. We feel that over 80 percent of the fishing vessel casualties are personnel-related, and we feel that fishermen are excellent at finding fish and catching fish, but what gets them in trouble is operating on the water in areas that do not pertain to the finding and catching of fish—navigation, handling of loads in rough seas, general housekeeping, failure to have fire detectors, bilge alarms, and things of this nature.

We would envision that once this guide is developed—and it is being developed in the Pacific Northwest around the industry that prevails there—that it will have sufficient flexibility built into it that it can be modified for use in other areas of the country, such as New England, the Gulf, the southern West Coast.

And this would be used as the basis for courses that would be developed and that would be taught by various institutions, possibly the fishing vessel safety centers at the University of Rhode Island, University of Washington at Seattle, and the Florida Institute of Technology at Melbourne, would be the source of this, plus other institutions and organizations.

Senator TRIBLE. Who would attend these courses?

Commodore KIME. The masters, captains, and operators of fishing vessels.

Senator TRIBLE. And what would be their incentive for doing that?

Commodore KIME. I think the incentive would come from their own concern about their safety. It would come from the incentive of the industry to develop a better safety record. You mentioned the situation that exists today in trying to maintain an insurance market. We have reached almost a crisis proportion on that basis.

We feel that this is something that we feel at this time is almost self-actuating.

Senator TRIBLE. Attendance at those kinds of courses could be made a condition for insurance coverage?

Commodore KIME. We would envision something like this, yes, Mr. Chairman.

Senator TRIBLE. You mentioned the positive effect of fire and smoke alarms and bilge alarms. Are these devices and fire extinguishers now required on fishing vessels?

Commodore KIME. Mr. Chairman, the only devices required on fishing vessels right now are the same devices that we would require on recreational boats. We have fire extinguishing devices, life jackets, lifesaving devices of that type, but nothing of the type that is being proposed in the navigation and vessel inspection circulars.

Senator TRIBLE. In your professional opinion, should fire and smoke alarms and bilge alarms be required?

Commodore KIME. We would very much like to see this happen, Mr. Chairman.

Senator TRIBLE. To what do you attribute the substantial increase of vessel losses, from 150 to 200 annually during the seventies to 250 vessels lost annually during the eighties?

Commodore KIME. Let me offer some comments, Mr. Chairman, and I would ask Captain Piche to possibly add to that. Obviously, I think we have an aging fleet and I think we are talking about an industry that is operating on the margin. Maintenance certainly could be a consideration. Maintenance possibly is not being given the consideration that it would if it were a healthy industry. It is an aging fleet.

Also, due to efforts to conserve our fisheries, fishing is only permitted at certain particular times, and if you are only allowed to fish on Tuesday and Thursday of a week and Tuesday and Thursday happen to be very rough days, there is a tremendous economic incentive to go out and fish on those days when seamanship and common sense might indicate that you should not.

Possibly Captain Piche could add to that.

Captain PICHE. Also, in some areas, particularly the Pacific Northwest, they are now operating a much larger vessel, with experiences growing. It is not something that is taught; it is self-taught. They have to get the experience.

When the 200 mile economic zone came in, the fishery grew very rapidly. We had almost a doubling in the number of vessels also, and there was a great need for additional fishermen. They were inexperienced, for the most part very young. In the past it had been the mom and pop type operation and they had learned as a youngster coming up through.

Now they had to take young people, inexperienced in what the sea is like out there, and that also contributed to a lot of injury.

Senator TRIBLE. Senator Gorton?.

Senator GORTON. Thank you, Mr. Chairman.

I think you have covered the subject with these witnesses very well. I do not have any further questions.

Senator TRIBLE. Gentlemen, I have some additional questions, but I would prefer to submit those for the record.

Commodore KIME. We would be pleased to do that.

Senator TRIBLE. Commodore Kime, we are most thankful for your presence here today. We look forward to working with you as you implement this voluntary safety program.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR TRIBLE AND THE ANSWERS

Question. Does the Coast Guard have any information on the number of fishing vessels operating without P&I or hull insurance?

Answer. No. The Coast Guard does not have any information on the number of fishing vessels operating without P&I or hull insurance.

Question. Will the Coast Guard require any additional funds to distribute the vessel safety guide and proceed with the associated courses on vessel safety?

Answer. The Coast Guard will not require additional funds. It is not the intent of our program to provide all fishermen or fishing vessels with free copies of the safety guide. Rather we intend to provide, at no cost, access to the printing plates to interested fishing industry associations. These associations will be able to update the guide by providing fishery specific safety items and then reprint the Safety Guide using whatever funding is available to them.

The Safety Guide that is now being developed, is being specifically tailored for large North Pacific fishing vessels; however, 80 percent of the material it covers is generic, applicable to all fishing vessels nationwide. Those fishing industry associations wishing to reproduce the Safety Guide for their region would only need to rewrite that 20 percent which is region specific. Although the safety guide will be distributed by the North Pacific Fishing Vessels Owners' Association to its members, the Coast Guard will have access to the printing plates in order that other regions may develop the fisheries' specific portion to meet their particular needs and concerns. It is envisioned that industry associations will make the safety guide available to their members. We will also coordinate distribution to the industry via the National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA) Sea Grant sponsored Fishing Vessel Safety Centers and the NOAA Marine Advisory Service. Other regions have already begun to develop regional safety guides. For example, the Southeastern Fisheries Association Inc., through a Saltonstall-Kennedy (S-K) grant, is developing such a guide which they estimate will benefit 100,000 persons in the Gulf and South Atlantic area. Task Force personnel have been in contact with the association and have offered them advice and the use of the printing plates.

The Coast Guard will encourage and provide technical assistance to private training institutions to develop fishing vessel safety courses using the Safety Guide as an outline. For example, the North Pacific Fishing Vessel Owners' Association has been awarded an S-K grant to develop such a training course for the Pacific Northwest. It is intended to serve as a model program for other regions. Task Force personnel will be acting as technical advisors; however, we do not anticipate providing any financial support for this program.

Question. Will the vessel safety information being developed by the Coast Guard be available to most all the commercial fishing fleet? How will it be distributed?

Answer. Yes it will. The proposed voluntary standards, which presently consist of a series of five Coast Guard Navigation and Vessel Inspection Circulars (NVICs), are available to the public through the Government Printing Office and local Coast Guard Marine Safety and Marine Inspection Offices for a nominal fee. These standards, which will later be combined into one document by the summer of 1986, will be available to the public in a similar manner. The Coast Guard has over the past year made the commercial fishing industry aware of the existence of these standards through presentations at conferences, safety seminars, newsletters (both government and industry), and press releases. Additionally we have distributed four of these NVICs to over 176 individuals, groups and organizations throughout the U.S. who have an interest in fishing vessel safety. Although the safety guide will be distributed by the North Pacific Fishing Vessels Owners' Association to its members, the Coast Guard will have access to the printing plates in order that other regions may develop the fisheries' specific portion to meet their particular needs and concerns. It is envisioned that industry associations will make the safety guide available to their members. We will also coordinate distribution to the industry via the National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA) Sea Grant sponsored Fishing Vessel Safety Centers and the NOAA Marine Advisory Service.

Question. You mention that mandatory licensing would require the issuance of 67,000 licenses. Would this be 67,000 annually, or is this simply the number of people who would need to be licensed originally? Does this number represent cap-

tains and mates, or does it include other crew members? Is it necessary to license others than captains and mates? Would you please provide for the record an estimate of the annual cost for a short (1-2 week) mandatory training course and licensing program with renewal every three years for captain and principal crew of ocean-going commercial vessels.

Answer. The Coast Guard estimates that it would initially require 67,000 licensed persons to provide a captain and a relief captain or mate for each of the 32,000 documented U.S. fishing vessels. Using the towing vessel and offshore supply vessel fleets as a comparison it would not be necessary to license persons other than the captain and mate; therefore, the above estimate does not include licensing engineers or any other member of the crew. Based on estimates obtained from private training institutions the Coast Guard estimates that a short two week training course for fishing vessel captains and mates would cost approximately $600.00 per person.

The Coast Guard estimates that it would take approximately 310,500 manhours during the first year of a mandatory licensing program and 26,000 manhours each year thereafter for renewals. In arriving at the number of manhours necessary to provide a licensing program the following assumptions were made; (1) 67,000 licenses would be issued the first year; (2) licenses would be renewed every five years rather than every three to be consistent with the current licensing laws; and (3) manhour figures and inclusive of examination time based upon a fifteen person queue, evaluations and clerical processing.

Question. Please provide for the record an estimate of the number of ocean-going commercial fishing vessels (5 tons or more) and the cost to inspect them on an annual basis.

Answer. There are approximately 32,000 U.S. documented commercial fishing vessels of over five tons. The Coast Guard is not able to identify how many of these are ocean-going and those that are not from the documentation records. We estimate that it would take approximately 128,000 manhours to inspect these vessels annually.

Question. To what extent will local Coast Guard officials participate in implementing, explaining and encouraging compliance with your voluntary efforts?

Answer. Local Coast Guard officials will play a vital role in implementing, explaining and encouraging compliance with our voluntary efforts. Coast Guard units are often contacted by various fishing vessel associations and safety groups to participate in safety seminars. Requests for helicopter hoist demonstrations, lectures on Coast Guard approved safety equipment, and guest speakers are examples. Participation in these events gives the Coast Guard an opportunity to maintain liaison with the industry and to discuss local safety issues. Instructions are presently being developed which will advise Coast Guard district commanders and commanding officers of Coast Guard units to: (1) subject to operational commitments, available resources, and type of assistance being requested, honor requests in cases described above and to use these opportunities to promote the use of the voluntary standards and safety guides; (2) ensure that information regarding the Coast Guard's fishing vessel safety initiatives are disseminated to boat builders, marine surveyors, insurance underwriters, fishing vessel owners, operators, industry associations, and other interested parties; (3) seek out fishing interest groups willing to produce a regional version of the Safety Guide.

Question. Have you determined whether insurance underwriters might reduce premiums for those vessels which implement your voluntary programs or do you believe the insurance benefit will be spread equally among all vessel owners in a region regardless of the efforts of any individual owners?

Answer. Discussions between personnel of the Coast Guard's Fishing Vessel Safety Task Force and insurance underwriters have suggested that considerations could be given for vessels that implement our voluntary program; provided that sufficient time had elapsed to indicate that adherence to these standards improved the safety record. Considerations ranged from stabilization of insurance premiums to a reducion in rates depending on the insurance company and the degree of compliance. Whether reductions will be for individual vessels or be spread out among owners would depend on each insurance company. Additionally, some insurance companies and marine surveyors have indicated a desire to make our voluntary program a part of their practices by making them a condition for insurance. Adherence to the voluntary standards will also help the fishing industry regain credibility with the insurance industry.

Senator TRIBLE. Next, Mr. William G. Gordon, Assistant Administrator of Fisheries, National Oceanic and Atmospheric Administration, United States Department of Commerce. Bill, you are most welcome.

STATEMENT OF WILLIAM G. GORDON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. GORDON. Thank you, Mr. Chairman and Senator Gorton.

The problems of insuring property and liability risks for fishing vessels are not new. I can think back in my career over the last three decades and find examples of serious outbreaks of this problem, and they have not been resolved over that period of time. And this is unfortunate, because now it is happening again at a time when earnings in many fisheries are depressed due to other problems.

I think the recent experience of our fishing vessel financing portfolio under Title XI of the Merchant Marine Act documents the fishing industry's insurance problem. Since our testimony was submitted, we have gotten some additional data, so there will be some changes here in what I am going to talk about.

Over the last 4 years, hull premiums have increased 45 percent and overall protection and indemnity premiums have increased 72 percent. Despite premium increases, the level of coverage has declined, due to increased deductibles, reduced insured values for vessels, and other exclusions from normal coverage.

The number of available underwriters has declined, and the liability premiums have risen faster than property premiums.

In general, the problem seems to be that insurance premiums are increasing faster than earnings in many fisheries can absorb those costs, insurance coverage is shrinking, and the availability of willing underwriters is contracting.

The fishing industry does not seem to be faring very well in the present property/casualty environment. The fisheries risk may well presently be perceived, for the following reasons, among others, as less favorable than other underwriting opportunities available to insurers. Fishing involves an inherently difficult and dangerous operating environment. Fishing vessels and owners have what amounts virtually to a strict liability for illness and injury of crewmen, and crewmen have access to jury trials for monetary damages as a result of these injuries. There are few mandatory standards for the construction, maintenance, or operation, including licensing and inspection, of fishing vessels, due to exemptions granted by statute. And earnings in many fisheries have been depressed in this decade, which may cause vessel operators to take increased operational risks or defer vessel maintenance.

In our view, two things may have to happen before the fisheries insurance situation improves. First, conditions in the property/casualty

sector of the insurance industry have to improve. Second, the insurance industry's perception of fisheries as a less favorable underwriting opportunity must change.

Certainly, greater safety is something which can gradually improve insurers' loss ratios on fisheries risks. This is true of both property and casualty risks. I know of no meaningful support for mandatory safety standards for the industry. Consequently, I believe fishing vessel safety must be improved by the voluntary actions of the two industries concerned, fishing and insurance.

Some efforts are under way, but more needs to be done. I believe the following are central to success:

Better national data on fishing casualties, which pinpoint the specific causes of loss and injury and focus on remedial activities;

Development of applicable safety training materials;

Greater commitment to cost control efforts by vessel owners, fisheries associations, labor organizations, and marine insurers;

Research and development, where appropriate, to improve the safety of existing equipment and practices;

And a central industry organization to coordinate these efforts.

I view NOAA's role as that of a catalyst. We have concentrated on facilitating contact between the fishing and insurance industries and helping them conduct pertinent projects by providing Saltonstall-Kennedy funds. This area was a national priority in our 1985 program and $380,000 worth of new projects were approved. This brings the total of Saltonstall-Kennedy grants involving fishing vessel insurance and safety to $642,000 over recent times.

I will briefly review some of the grant projects. The Coast Guard has mentioned one: The National Council of Fishing Vessel Safety and Insurance is coordinating the Marine Index Bureau efforts to establish a national casualty data bank for fishing vessels.

The National Council is presently evaluating alternative liability systems for crewmen illness and injury.

The North Pacific Fishing Vessel Owners Association is developing a vessel operator's safety manual and the Coast Guard, as you have heard, is cooperating in this effort.

The same association is also extending its safety effort to more direct training. It is developing video tape training guides for use on vessels. These training programs will be based on the vessel operator's safety manual. I might add here that at times at sea the crewmen often read everything, including the labels on the Kellogg's, and maybe we have to resort to other materials that extol safety practices.

The National Council is studying fisheries management regulations and developing recommendations to minimize adverse impacts on fisheries safety. A report is due in March of 1987. Additionally, we have asked in very strong terms that the Regional Fishery Management Councils consider fully this aspect as they develop fishery management plans or amend existing ones.

The National Council will also begin a more determined effort to coordinate centrally resolution of the fishing industry's insurance problems.

The Southeastern Fisheries Association will develop a loss control program which could lead to group and mutual insurance mechanisms.

A model, State-underwritten, mutual insurance program for commercial fishing vessels will be evaluated. A practical manual will be prepared and made available to other states. The State of New Jersey appears interested in considering such a system.

We will continue to support the efforts of the fishing and insurance industries to resolve the problem, but we do not believe major Federal participation is either practical or supportable.

We believe that the voluntary action of the fishing and insurance industries represents the best way to resolve this problem. With closer cooperation between both industries, greater attention to loss control, a practical resolution of the liability situation, and improved capacity in the insurance industry, there is hope for gradual improvement.

Mr. Chairman, I would be more than happy to respond to any questions that you or the Senator may have.

Senator TRIBLE. Mr. Gordon, thank you for your testimony.

You mentioned that the National Council on Fishing Vessel Safety Insurance is studying the impact of management regulations on vessel safety. When is the report due?

Mr. GORDON. March of 1987.

Senator TRIBLE. In your opinion, are management regulations significantly affecting the safety of commercial fishing operations?

Mr. GORDON. I think they are. The magnitude is hard to determine, but the Commodore spoke of one, a surf plan fishery on the east coast where the plan is an effort to spread out the landings so that we could maintain shoreside employment has invoked a number of days per week to be fished.

With bad weather and little option for our other alternative, there have been, I think, trips to sea that should not have been undertaken if other management measures were in place for that vessel to exercise its prerogative.

Senator TRIBLE. Certainly that concern has been expressed to me by Virginia's fishermen.

Mr. GORDON. I think there are other examples of that. In Alaska, the Pacific Northwest, in the halibut fishery, the Halibut Commission, the commission between the United States and Canada has determined that there would be a 2-day opening in April, and if there is anything left, the 2-day opening at later times during the year.

In April, in particular, the North Pacific is not a good place to be, but there is still a mentality of a gold rush. You have got to go out there and get that fresh halibut before the other guy gets it and the fishery is closed, so you try to get the most, and the crewmen, I

think, are spending long hours with little rest operating the gear in what is often extremely bad weather, and this obviously leads through fatigue, if nothing else, to additional risk of accidents.

Senator TRIBLE. The Congress, in reauthorizing the Magnuson Fishery Conservation and Management Act, is considering an amendment that would require that all fishery management plans take vessel safety into account. Is that a positive step in your judgment?

Mr. GORDON. I think it is. We have sent letters to all the councils asking them to do that now, to clearly provide for public input to this issue at the appropriate time in development of plans, and I think making a mandatory provision is a wise course.

Senator TRIBLE. As a practical matter, in the real world in which we operate, what kind of impact do you believe safety training and voluntary safety standards will have in effectively reducing casualty rates?

Mr. GORDON. I do not think we have really exhausted all the options of providing it. Candidly, I would say probably not very much. The drive is to produce income. You have to catch a lot of fish because the share system says you are paid on a share basis. That drive, often, in my mind forces people to overlook safety.

I do not know what an acceptable substitute for that is. Clearly some industries, and one is in your district, the menhaden industry, through its own internal capability, has a very greatly improved safety record.

If you will, they blackball the poor performer, the guy who takes the risk. They invoke safety standards on the vessels. They have a high degree of maintenance. That stands out as one segment of the fishing industry that is vertically integrated, and it has aggressively gone after its safety problems, and I think in doing so still enjoys reasonable rates of insurance.

Senator TRIBLE. Are you talking about the idea of limited entry?

Mr. GORDON. I think it is an option that should not be overlooked. We have asked the councils to take a look at it as an option of fisheries management presented to the industry. If the industry is willing to accept such an option, then we think it is an appropriate way to go. I am not going to force that approach on anyone, because I think it is society's choice, but to me it offers the option of improving vessel safety. It also offers greatly improving economic performance. It takes time and patience and a lot of perseverance to introduce those sorts of management measures, however, in an industry that is used to the open range.

Senator TRIBLE. As someone who has substantial expertise in fisheries management, and in the operation of the fishing industry, in broad brush, what other kinds of specific steps ought to be taken? I do not want you to limit your response to your particular jurisdiction.

Mr. GORDON. I think one of the biggest problems seems to be poor maintenance. When earnings are down, maintenance generally declines as well in many of these vessels, and as a result we see

badly eroded guy wires and that sort of thing, winch cables that are poorly maintained, these sorts of things, all of which create relatively high risk if they fail at sea.

Inspection seems to be a bit harsh to enforce maintenance, but in most segments of American society that has been necessary to improve safety on the highway, safety in aircraft, and the like. I don't think it is appropriate for the fishing industry before we try the voluntary approaches. That is a bit harsh and abrupt treatment, but I think an evaluation of the causes of accidents will reflect that one of the biggest reasons is poor maintenance.

Senator TRIBLE. Senator Gorton?

Senator GORTON. Mr. Gordon, do you have any view on the question as to whether or not these vastly increased insurance premiums, sometimes lower and more limited coverages, are reasonable or unreasonable in reflecting the risks and the losses to those insurance companies? Are they arbitrary, or are they simply driven by experience?

Mr. GORDON. I think they are by and large driven by recent experiences. Our portfolio in the title XI program does not reflect an arbitrary and capricious change. As we look at some of those in going around the country in the various regions we can find that they are out of kilter. For example, comparing Alaska with the northeast over the last four years, the increase in P&I insurance rates in Alaska is 21 percent, whereas in the northeast region the increase is 95 percent.

I have not studied in any depth the actual P&I casualties, but from my experience, I find that often the vessels in the northeast are older on the average, although there have been some recent new ones, whereas, as reported earlier, the vessels in Alaska are relatively new.

Also, I found that there is a different ethnic background behind some of those fishermen, and there may be something inherent in the family units of New England that has led to greater safety risk being taken by fishermen. Some groups I notice are extremely cautious about fishing practices, and others are not.

This is just an observation that I have no verification for, but you look at the Pacific Northwest region, as compared to Alaska, and the total increase in P&I is 108 percent as opposed to 21 percent in Alaska, and yet some of those same operators operate off the coastal area of the northwest.

I have a hard time seeing why some of those disparities exist when vessels and fishermen of that area often utilize the same fishing grounds. If we look at the southeast, we see a P&I rate increase over the last 4 years of 61 percent at a time when that industry has seen a lot of changes in new fisheries. Some of them have left the shrimp industry and gone to others, and let me account for that change.

Senator GORTON. In your testimony, you set out four reasons or rationales for the fact that insurance costs are very high. The second of those speaks of virtually to strict liability for illness and injury and refers to jury trials and the like. Are you recommending to us that

we change any of the basic legal concepts of recovery or provide additional limitations in order to deal with this problem, or are you simply describing the nature of the problem without making recommendations in that regard?

Mr. GORDON. We are really not making a recommendation, but I think it is worthy of a close look. I am a long ways from being an expert on the statutes, but I feel that this does have a bearing. Access to jury trials often results in American society in grossly inflated settlements.

Senator GORTON. Thank you, Mr. Chairman. Thank you, Mr. Gordon.

Senator TRIBLE. Mr. Gordon, let me ask you one further question. What about making the fisheries loan fund available to create a federal reinsurance pool?

Mr. GORDON. The Fund's moneys are derived through the foreign fishing fees, and that fund has grown to somewhat in excess of $100 million, and its growth may deteriorate very rapidly in the near future. We don't think Federal money is really going to solve the insurance problem.

I think that, instead, we have to focus on the insurance industry, the private sector, and say, cure the problem before we resort to that sort of measure.

Senator TRIBLE. Now, those moneys are kept separate and apart at this point?

Mr. GORDON. Yes.

Senator TRIBLE. There is always a push to make them flow into the general treasury, given our large deficit.

Mr. GORDON. That is correct, and the perception around the industry and, I suggest, perhaps among Members of Congress is that there are about 40 different ways they would like to see those moneys spent.

Senator TRIBLE. How are those moneys now spent?

Mr. GORDON. It is subject to annual appropriation as some of those funds are used for fisheries loans. Appropriations have run less than $5 million, and since it is in an interest-bearing account, it is growing at a rate of interest which preserves the principal.

Senator TRIBLE. Mr. Gordon, we thank you for being here today. There may be some additional questions provoked by the testimony today, and if so, I would like to furnish those to you in writing.

Mr. GORDON. Yes. I would leave with you, if you choose, some graphic material that reflects the title XI program. You might find it useful.

Senator TRIBLE. I would like to make that a part of the record if we can. Thank you very much, Bill, for being here.

[The statement follows:]

STATEMENT OF WILLIAM G. GORDON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NOAA, DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Subcommittee:

The problem of insuring property and liability risks for fishing vessels is not new. There have been serious outbreaks of this problem in each of the last three decades. Few of the underlying causes were permanently resolved, and this problem has once

again become serious. This is unfortunate at a time when earnings in many fisheries are depressed due to other problems. The recent experience of our fishing vessel financing portfolio under Title XI of the Merchant Marine Act documents the fishing industry's insurance problem:

(1) Annual premium increases of between 60 and 80 percent are the norm;

(2) Despite premium increases, the level of coverage has declined due to: increased deductibles, reduced insured values for vessels and other exclusions from normal coverage;

(3) The number of available underwriters has declined; and

(4) Liability premiums have risen faster than property premiums.

In general, the problem seems to be that insurance premiums are increasing faster than earnings in many fisheries can readily absorb, insurance coverage is shrinking, and the availability of willing underwriters is contracting.

We perceive several possible causes of the present fisheries insurance problem—some relating to the nature of the fisheries risk and others to the property casualty sector of insurance industry itself.

It should be noted that fishing vessel risks are a very small percentage of overall risks underwritten by property and casualty insurers. Other industries also appear to be experiencing problems in the insurance of some property and casualty risks.

The fishing industry does not, however, seem to be faring very well in the present property/casualty environment. The fisheries risk may well presently be perceived, for the following reasons, among others, as less favorable than other underwriting opportunities available to insurers:

(1) Fishing involves an inherently difficult and dangerous operating environment;

(2) Fishing vessels and owners have what amounts virtually to a strict liability for illness and injury of crewmen and crewmen have access to jury trials for monetary damages as a result of injuries;

(3) There are few mandatory standards for the construction, maintenance, or operation (including licensing and inspection) of fishing vessels due to exemptions granted by statute; and

(4) Earnings in many fisheries have been depressed in this decade, which may cause vessel operators to take increased operational risks or defer vessel maintenance.

Two things may have to happen before the fisheries insurance situation improves. First, conditions in the property/casualty sector of the insurance industry have to improve. Second, the insurance industry's perception of fisheries as a less favorable underwriting opportunity must change.

The present liability standard is well-established, and certainly no one suggests that crewmen should not be justly compensated for illness and injury arising in the course of employment. I believe the fishing industry must evolve toward a practical position on this issue, one which is capable of increasing the insurance industry's confidence. The National Council on Fishing Vessel Safety and Insurance is presently evaluating this aspect of the problem. The results of the Council's evaluation should be available by December 1985. This may form the basis of a fishing industry consensus on this issue.

Certainly greater safety is something which can gradually improve insurers' loss ratios on fisheries risks. This is true of both property and casualty risks. I know of no meaningful support for mandatory safety standards. Consequently, I believe fishing vessle safety must be improved by the voluntary action of the two industries concerned, fishing and insurance. Some efforts are under way, but more needs to be done. I believe the following are central to success:

(1) Better national data on fisheries casualties, which pinpoints the specific causes of loss and injury and focuses remedial activities;

(2) The development of applicable safety-training materials;

(3) Greater commitment to loss-control efforts by vessel owners, fisheries associations, labor organizations, and marine insurers;

(4) Research and development, where appropriate, to improve the safety of existing equipment and practices; and

(5) A central industry organization to coordinate these efforts.

The fishing and marine insurance industries are beginning cooperatively to approach the problem. The American Institute of Marine Underwriters has demonstrated its interest in working with the fishing industry. This is also beginning to occur between local fishing groups and interested members of the marine insurance community. The U.S. Coast Guard is supporting these efforts. NOAA is also supporting them through the Saltonstall-Kennedy grant program.

I view NOAA's role as that of a catalyst. We have concentrated on facilitating contact between the fishing and insurance industries and helping them conduct pertinent projects by providing Saltonstall-Kennedy funds. This area was a national priority in the 1985 Saltonstall-Kennedy program, and $380,000 worth of new projects were approved. This brings the total of Saltonstall-Kennedy grants involving fishing vessel insurance and safety to $642,000. The following are the results of the grant projects:

(1) The National Council of Fishing Vessel Safety and Insurance is coordinating the Marine Index Bureau efforts to establish a national casualty data bank for fishing vessels. These data are needed to identify problem areas, focus remedial activities, and help the insurance industry better assess risk. NOAA and the American Institute of Marine Underwriters are actively engaged in this effort. Everyone hopes that this effort will eventually resolve what has been a lack of meaningful fisheries casualty data in this country.

(2) The National Council is presently evaluating alternative liability systems for crewmen illness and injury. Models of alternative systems will be developed, and a cost/benefit analysis completed, using a representative sample of current casualty claims from underwriters' files. A final report is due on December 31, 1985. Everyone hopes this effort will lead to a practical consensus on this difficult issue.

(3) The North Pacific Fishing Vessel Owner's Association is developing a vessel operator's safety manual. The U.S. Coast Guard is cooperating in this effort. Upon completion in April 1986, this manual will be simple and direct, contain the most current safety information, and be easily adaptable to other fisheries.

(4) The same Association is also extending its safety effort to more direct training. It is developing video tape training guides for use on vessels. This training program will be based on the vessel operator's safety manual. Although it will apply to the larger vessels operating in one of the toughest areas, the Gulf of Alaska and Bering Sea, this prototype effort may pave the way for similar efforts elsewhere.

(5) The National Counci is studying fishery management regulations and developing recommendations to minimize adverse impact on fisheries safety. A report is due on March 31, 1987. Additionally, I have asked the Regional Fishery Management Councils to consider fully this aspect.

(6) The National Council will also begin a more determined effort to coordinate centrally resolution of the fishing industry's insurance problems.

(7) The Southeastern Fisheries Association will develop a loss-contral program which could lead to group and mutual insurance mechanisms. The loss-control program will apply to fishing vessels in the Gulf and South Atlantic, but the effort should be applicable in other fisheries. The National Council will use the results of this effort to assit other fishery associations in this area. Fishermen who are willing to work together by developing and enforcing strict safety standards represent a good potential for reducing casualties and offering a superior group risk to insurers. Mutual insurance associations can go one step further by underwriting some portion of their own risk.

(8) A model, state-underwritten, mutual-insurance program for commercial fishing vessels will be evaluated. A practical manual will be prepared and made available to other states. The state of New Jersey appears interested in considering such a system. The study will be completed in May 1986, and forwarded to the state legislature for review.

We will continue to support the efforts of the fishing and insurance industries to resolve the problem, but we do not believe major Federal participation is either practical or supportable. The foreign fishing fee assets presently being held in the Fisheries Loan Fund account have been mentioned as a source of capitalizing a Federal reinsurance program for the fishing industry's mutual insurance efforts. We do not support the use of Federal funds for this purpose.

We believe that the voluntary action of the fishing and insurance industries represents the best way to resolve this problem. With closer cooperation between both industries, greater attention to loss-control, a practical resolution of the liability situation, and improved capacity in the insurance industry, there is hope for gradual improvement.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or other Members of the Subcommittee might have.

Senator TRIBLE. You gentlemen are all welcome.

STATEMENTS OF HOWARD I. MASON, VICE PRESIDENT, ADAMS AND PORTER ASSOCIATION, INC., REPRESENTING NATIONAL ASSOCIATION OF INSURANCE BROKERS, AND PETER J. EGAN, CHAIRMAN, FISHERIES INSURANCE COMMITTEE, AMERICAN INSTITUTE OF MARINE UNDERWRITERS: ACCOMPANIED BY WALTER M. KRAMER, VICE PRESIDENT

Mr. MASON. Good morning, Mr. Chairman. I am Howard Mason, vice president of Adams and Porter Association, a Houston-based international, specializing in the marine and energy insurance business. I have over 20 years of experience as both an underwriter and a broker of insurance coverage for fishing vessels.

I am appearing today on behalf of the National Association of Insurance Brokers, a trade association that represents commercial insurance brokers who provide insurance and risk management services to clients in the United States and around the world.

NAIB members range in size from the largest international brokerage houses to smaller regional firms. Our members wrote or administered over $26 billion in premiums in 1984.

Before I present my views on the availability of insurance for fishing vessels in today's insurance marketplace, I want to explain the role of commercial insurance brokers. Basically, brokers help clients design risk management programs that will protect their assets and provide a stable climate for production and growth. We examine a range of options for accomplishing this, including purchase of traditional insurance and use of self-insurance programs. We do represent underwriters. We represent insurance buyers.

Today's adverse market conditions for fishing vessel insurance reflect the conditions of the insurance marketplace for most lines of commercial insurance. It has become commonplace to read new stories about the unavailability of insurance at any price or at prices drastically higher than they were a year ago.

Insurance coverages for medical and legal malpractice, day care centers, municipal governments, hazardous waste cleanup, vaccine development, and directors' and officers' liability are hard to come by. When available, premium increases can range from 25 percent to 300 to 500 percent higher than last year. Both large and small businesses are affected.

The cause of today's tight insurance market goes back to the open and highly competitive insurance market of the late seventies and early eighties, and basic supply and demand economics. There were too many sources competing for business over the past 5 to 6 years, and insurance was underpriced. Insurers were willing to risk losing money on underwriting because they could still hope to make a profit by investing premium dollars at high interest rates.

But they lost more on underwriting than they had ever expected when claims drastically escalated during the past couple of years, and at the same time interest rates have been cut in half. Today's low interest

rates do not generate enough income to fill the gap if premium rates fail to cover underwriting costs.

And today, because of their heavy losses, underwriters do not have the reserves needed to continue underwriting at yesterday's artificially low rates. Industry analysts predict huge gaps, tens of billions of dollars between the amount of insurance that buyers will want and need over the next few years and the insurance industry's ability to provide it because of their shrunken reserves.

To stay in business, underwriters must rebuild lost reserves. Underwriters are no longer competing for business. Instead, they are raising rates and operating with stricter underwriting practices. Only the better risks will find coverage, and that coverage will be at significantly higher costs than in recent years.

There is another problem that is contributing to the insurance crisis. It is commonly referred to as the civil justice crisis, and NAIB is on record as seeking reforms in the civil justice system that will provide a fairer and more efficient system of handling liability disputes.

The crux of the problem is twofold. First, there has been a proliferation of liability claims. Secondly, American courts, in an attempt to find a means for compensating victims, have tended to view insurance as the ultimate deep pocket. Liability doctrines continue to expand and expose underwriters to liability claims payments far beyond the intent of the coverage provided.

Lloyd's of London chairman Peter Miller has said flatly that its underwriters do not feel that they can get a fair shake under the American legal system, and they will not continue to offer coverage without some certainty about the parameters of the risks they are assuming.

Lloyd's data for its latest closed year, 1982, show underwriting losses of $304 million in excess of premiums, the worst losses in 300 years. While the liability policies covering U.S. risks account for only 12 percent of Lloyd's business, almost all of the 1982 losses stem from liability claims in the United States.

U.S. underwriters face similar losses. According to the insurance services office, property casualty underwriting losses for 1979 through 1984 totalled a staggering $55 billion in excess of premiums. In 1984, general liability had the highest combined ratio of all commercial lines at 152. This means that on an underwriting basis insurers paid out $1.52 for every dollar of premium written.

The fishing industry is caught in the same insurance crisis as other industries face. Unfortunately, it comes at a time when the fishing industry must cope with many other problems. Marine insurance capacity is limited, just as capacity in other commercial lines is limited today.

Liability claims are a major contributing factor in the fishing vessel insurance crunch. Over the last five years plaintiffs' attorneys have found that fishing vessels are easy prey in liability actions.

In Texas, we see the plaintiffs' bar operating like a well-oiled machine. It is well documented that the number of attorneys representing injured crewmen, say, in Brownsville, TX, has jumped from one to

13 in the past 5 years. They have a reputation for tracking down the injured and allegedly injured and rushing them to doctors willing to perform surgery on an overnight basis.

Senator TRIBLE. You find lawyers doing that?

Mr. MASON. Arranging it.

Senator TRIBLE. I see.

Mr. MASON. A review of the files in my office show that over the past 5 years, and we are talking about the Gulf of Mexico shrimping industry, on basically the same book of business, the number of claims has tripled, and the severity of injury, as reflected in the dollar amount of settlements, has increased five times.

There is no denying that fishing vessels are more dangerous work environments than many industrial workplaces. It is also a fact that underwriters will not provide insurance coverage for the industry unless future liability is predictable. Workers have a right to a system that offers a speedy and certain recovery for injury.

If the U.S. fishing industry as we know it is to survive, liability must be covered in a manner that is both predictable and affordable. Despite the problems faced by many fishing vessels in securing insurance coverage, it is important to recognize that there is a viable insurance coverage available for viable risks.

If a fishing vessel is well maintained, has a decent or explainable loss record, a good maintenance and repair program, competent management, a proper and acceptable survey, and a realistic valuation, we feel insurance coverage is available. The price of coverage is likely to be higher by 100 percent or more than it was at last year's unrealistically low rates, but it is available.

Some vessels, those that are operated under less than optimum conditions, are seeing much higher rate increases in the range of 300 to 500 percent, and then there are those that just plain cannot find coverage. It is important to note, however, that good performers typically are finding coverage.

Self-insurance is an option that business often uses as a risk management device when traditional insurance products are unavailable or are too costly to be a reasonable option for protecting assets. Commercial insurance brokers help clients design self-insurance programs that can employ a wide range of risk management techniques, including formation of captive insurance companies and self-retention of risk up to certain levels.

Unfortunately, self-insurance is of limited use in the fishing industry. With rare exceptions, fishing vessel operators are an independent breed of businessmen. And they are not inclined to join together in self-insurance programs. This lack of interest in self-insurance programs is due in part to the unwillingness of individual fishing vessel operators to assume liabilities for competitors who they fear may be less responsible than they themselves are.

In addition, because many of the better risks can obtain insurance even in today's tight market, there is often an element of adverse risk selection, with only the less viable risks having a vested interest in joining cooperative self-insurance programs.

This in turn makes self-insurance a less viable option.

In conclusion, I want to stress that as insurance marketplace experts, risk management advisers, and problem solvers, NAIB members stand ready to assist you in evaluating proposals aimed at solving the insurance crisis faced by many fishing vessel owners today.

Thank you for providing this forum for discussion of the problem. I would be happy to answer any questions you may have.

Senator TRIBLE. Thank you, Mr. Mason.

Mr. Egan.

Mr. EGAN. MR. Chairman, members of the committee, good morning.

Accompanying me today is Walter Kramer, vice president of the American Institute of Marine Underwriters.

In the spring of this year, in response to a request from the House Committee on Merchant Marine and Fisheries, the directors of the American Institute of Marine Underwriters authorized the formation of a fisheries insurance committee to assist in the effort to document problems facing the U.S. fishing industry regarding insurance matters and to explore alternatives for increasing the availability of insurance for fishing vessels and reducing its costs.

Mr. Kramer and I are here today on behalf of the members of the American Institute of Marine Underwriters to evidence their concern over this problem and to contribute what we can to resolve it. We have polled our members to establish a basis of statistical history to determine the results of their involvement in this class of insurance.

The conclusions of that survey are clear. In the aggregate, by year, in all geographical areas of risk, and, in the two major divisions of the class of insurance, that is, insurance of the vessels against loss or damage, and insurance of the owners against their liability as operators of vessels, the underwriters have incurred losses and expenses that have exceeded premiums collected by 58 cents on the dollar.

The solution to the problem to underwriters and to their stockholders if the companies are to remain solvent may lie in any acceptable combination of three remedies. One, reducing claim costs. Two, obtaining sufficient premiums to cover claim and expense costs. Three, better risk selection.

The underwriter can do little to augment the first remedy. If the cost of medical treatment for injured crewmen continues to increase, and if the cost of damages against the owners, that is in the main pain and suffering awards on behalf of crew against owners, if this is not made more predictable, underwriters who bear the risk on behalf of the owners have no alternative but to increase premiums.

The second remedy, increasing premiums, is of itself undesirable, and the reason we are all here today, so we will, for the purpose of this endeavor, reject that solution as unacceptable. The third, the element of risk selection, takes many forms.

Essentially if the owner can demonstrate to the underwriter that he is maintaining and operating his vessel in a satisfactory manner, as would a prudent uninsured person bearing the risk of the venture on his own, the cost and availability of insurance would still have to reflect a factor of all the risks of an extremely hazardous business.

Since the underwriter's need to know about the vessel he considers insuring plays a part in this risk selection, there may be additional costs of surveys or engineering which must be paid either by the owner or by the underwriter as an additional item of expense out of premiums.

The best solution for all, we feel, may lie in a combination of reduced or controlled claim costs and better risk selection. Please understand, I am speaking on behalf of a community of marine underwriters and a rather limited community at that, only the members of the American Institute of Marine Underwriters.

Just as it has been said that there is no such thing as the average man or woman, there may be no such thing as the average underwriter. However, if you allow us the privilege of responding as would an average underwriter, Mr. Kramer and I would be pleased to attempt to answer any questions you may have.

[The statement follows:]

STATEMENT OF THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS

Mr. Chairman and Members of the Committee, The American Institute of Marine Underwriters (AIMU) is pleased to have this opportunity to present comments on the subject of fishing vessel safety and insurance. My name is Peter J. Egan and I am the Chairman of the AIMU Fisheries Insurance Committee. I am also a Vice President in the home office underwriting department of the Marine Office of America Corporation (MOAC). MOAC is the marine underwriting manager for the Continental Insurance Companies and other insurance companies. I am accompanied by Walter M. Kramer, Vice President of the American Institute of Marine Underwriters.

AIMU is a trade association of some 120 insurance companies which underwrite about 90% of the marine insurance written in the United States, so it naturally has a keen interest in any problems which beset any segment of the maritime industry served by its members. To be fair, however, we should put the fishing vessel insurance market in perspective. This class of business constitutes a very small percentage of the marine insurance written by our members overall. We estimate that fishing vessel insurance makes up less than 5% of the marine insurance written by AIMU members during the past five years. Many marine insurers traditionally have not entered the market for reasons which have nothing to do with the current crisis. We know that some AIMU members have recently withdrawn from the fishing vessel insurance market or have severely curtailed activities in this class of business. There are a large number of small local or regional insurance companies which insure fishing vessels, and many large and small foreign carriers as well. While there are no reliable statistics, we are confident that the bulk of fishing vessel insurance premiums written on American fishing vessels is written by companies not affiliated with AIMU.

Yet current problems associated with insurance of fishing vessels are a matter of concern to our members. AIMU has been cooperating with a number of groups in attempting to analyze and quantify the problems which have led to difficulties in obtaining fishing vessel insurance at prices deemed reasonable by operators. We are

working with the National Marine Fisheries Service, and the National Council on Fishing Vessel Safety and Insurance, and The Marine Index Bureau, among others, in attempting to gather data which we believe will be helpful and which may point towards solutions.

AIMU has established a Fisheries Insurance Committee made up of underwriters experienced in insuring fishing vessels. Our committee is currently attempting to analyze problems and find solutions. We have also begun a dialogue with representatives of various fishery industries throughout the country. One of the major difficulties which the AIMU Fisheries Insurance Committee faces in attempting to analyze the fishing vessel insurance market is the lack of uniform statistics. There is simply no standard industry-wide fishing vessel insurance data kept in this country. The AIMU Fisheries Committee has sent out to its members a questionnaire designed to produce industry-wide loss figures including market contraction by region. AIMU's staff is in the process of compiling and analyzing the statistics and information contained in the responses which are as yet incomplete.

Preliminary results of the survey show that AIMU members' experience in the fishing vessel insurance market has been disastrous. According to the responses received so far, AIMU members have collected $160,414,000 in gross premiums on both hull and P&I coverages on fishboats over the past five years. During the same time period they have paid out $206,075,000 in losses. Add to this insurance companies' cost of doing business, and you find the combined loss and expense ratio for AIMU companies writing fishing vessel insurance has been approximately 158% over the past five years. That means that for every dollar taken in by the companies in this class of business, $1.58 has been expended.

We call the Committee's attention to the Exhibit attached to our testimony. That chart sets out the gross premiums, and losses for the past five years as reported in AIMU's survey. The comparison between loss and expense ratios for marine business over all and ratios for fishing vessel insurance speaks for itself. In 1982 for example the general American marine insurance market experienced a combined loss and expense ratio of 104 percent; for fishing vessel insurance, the ratio was 190 percent! Only one of the responding companies reported a profit on fishing vessel insurance during this period. That company made a small profit during two years but somehow saw the handwriting on the wall. They no longer write fishing vessel insurance. If there has been any question in anybody's mind about why it has become difficult to obtain fishboat insurance, these figures should suggest answers to such a question.

Some examination of basic fundamental principles in insurance may be helpful at this point. Basically insurance is the transfer of risk from someone who cannot or does not want to absorb a risk to someone who is willing to absorb or spread the risk for the payment of a premium. The aim of this transfer of risk is to reduce financial uncertainty and to make accidental loss manageable. Insurance accomplishes this goal by substituting a payment of a fee known as a premium to an insurer in exchange for the insurer's assumption of the risk of a large loss and the insurer's promise to pay in the event of such loss. Insurance relies on the probability that only some of the policyholders will suffer losses. Risk is spread in the sense that the large losses of a few are distributed through an insurer to a large number of premium payers. The rates charged must support the losses incurred. Insurers collect loss experience as a basis for review of historic premium needs. They must also project these historic patterns into the future to determine a fixed cost today that will cover the losses that will have to be paid tomorrow. When loss experience and expectation of loss in a particular class of business become so adverse that policyholders can no longer pay the price which must be charged to meet the costs, some basic examination of the industry making up that class is needed. The Committee has heard considerable testimony about the difficulties of the fishing vessel industry in obtaining affordable insurance. We wish to stress that this lack of availability and affordability is indicative of some basic problems within the fishery industry itself.

In order to get to the root of the problem, we suggest the following inquiries be made:

(1) Why have losses within the fishing vessel industry exceeded the ability of the industry to pay for those losses?

(2) What are the economic conditions within the fishery industry which have curtailed the ability of fishermen to produce the kind of income necessary to support such losses?

(3) What are the factors which have caused so many losses of fishing vessels and so many costly injuries with the result that the remaining vessels can no

longer afford the premiums which must be charged to cover such loss experience?

(4) What are the factors that have made the cost of meeting payments to injured seamen so expensive that fishing vessel owners can no longer support such payments?

(5) Why are many fishing vessel owners and operators unable to maintain their vessels in a sufficient state of repair to qualify for insurance?

The so-called "insurance problem" in the fishery industry goes far deeper. It would be superficial to maintain that insurance is itself the cause of the fishery industry's problems. What are the underlying problems as insurers see it? Of course, fishing is a hazardous occupation. Commercial fishing is simply not a sunny day occupation. Beyond that, though, there are a number of factors which underwriters, claims adjusters and surveyors in our industry view as contributing to the deteriorating conditions in the fishing vessel insurance market. One of the primary concerns of insurers is safety. Most of the fishing vessels are not regularly inspected unless required by insurers. There is no meaningful safety regulation of fishing vessels. There are no mandatory standards for fishing vessel construction or safety. There are generally no licensing requirements for owners, operators or crew. There are no tests for competence, and in some parts of the country no check is made on employment history, experience, and previous accidents or illnesses.

One of the major safety problems as insurers see it is that some fishermen, particularly in view of the difficult economic problems which some of them face, take chances, perhaps too many chances. A fisherman has no guarantee that the selling price of the catch will exceed his operating expenses. Many of his costs, including fuel, mortgage expenses, wages, and now insurance, are going up. Pressed by these deteriorating economic conditions over which he has no control, the fisherman may feel compelled to go to sea no matter what the weather. He may overload his vessel in an attempt to produce enough catch to meet rising costs. Operators are forced to cut costs but they often do so at the expense of vessel maintenance, safety, and/or crew experience.

The fisherman is beset by cheaper foreign competition and three may be an over supply of hulls in some regions and a declining catch, making competition more intense. In some areas there is a limit to how much may be caught, or three is a limit on the season. All of these pressures push owners and operators to put off repairs and cut corners. Some of the smaller operators may lack the sophistication needed to actually run such a business, particularly in hard times.

It is no mere coincidence that more losses occur when times are bad. Severe economic pressures such as these raise the specter of the "moral hazard" (i.e. the fear that boats will be sunk to "cash in" the insured value). Some boats are "stolen" by their own captains, especially non-owned vessels, who may see an opportunity for quick profit in the drug traffic and are willing to take risks. The losses to underwriters from this cause are believed to be considerable.

Problems in design and stability have been key and are aggravated by these depressed economic conditions. Most fishing vessels are designed for one type of fishing in one particular area. For example, shrimpers in the U.S. Gulf region, crabbers in the Pacific Northwest, seiners in the Canadian Maritime and New England waters are each designed for one particular kind of fishing. Many times, however, such boats intended for one purpose are used for another, i.e. shrimp boats used for scalloping. The two operations are quite different and with an inexperienced crew, the number of injuries and losses can rise sharply. Moreover, the weight differential between the two catches can affect the vessel's stability. The overloading of catch and equipment can also impair stability. Even the weight of accumulated ice on crab cages stored on deck can capsize boats. Stability problems caused by such practices are strongly suspected as a cause for many of the sinkings in the recent years. Lack of attention to the use of fuel not only affects stability but the safety margins needed to bring the vessel back to port as well. Although most traditional marine designs are tried and true, sometimes a new vessel is built without proper regard to stability. This was the case with a well-known boat builder in the Gulf of Mexico who attempted to build a larger boat than his competitors. The builder used different proportions and the boat capsized upon launching.

Vessel maintenance continues to be a factor, especially in times of operational cost cutting. The failure of through-hull fittings, engines, fuel lines, or bilge pumps while at sea in heavy weather can spell disaster. Yet, inspections even for fire extinguishers are often winked at.

In addition to economic and physical factors, political decisions can have an enormous impact on the fishing industry. Under provisions of the Fishery Conservation and Management Act of 1976, designed to protect the diminishing supply of sea

clams off the Middle Atlantic Coast, clamming was limited to one six hour period in any fourteen consecutive days. Unfortunately because of this limitation, clammers tried to bring in as big a haul as possible and the overloaded clam boats sometimes sank from the weight of the catch.

In addition to safety and economic conditions contributing to this sorry state of affairs, underwriters see the tort system as contributing to worsening conditions. A particular concern is the inability to anticipate court or jury personal injury awards. The costs of litigating such cases, including the costs of contingent fees for plaintiff's attorneys, are an additional contributing factor. It has become increasingly difficult to rate a P & I policy because of the inability to predict costs associated with such awards.

All of these factors, lack of maintenance, design and stability problems, lack of safety requirements, lack of crew standards, cost cutting, competition, declining catch, personal injury awards, etc. have contributed to the disastrous results which insurers of fishing vessels have experienced over the last five years. As we pointed out before, it is imperative that the price or the rate of insurance must cover the costs the insurer encounters. During the years of high interest rates and high inflation, entrants into the fishing vessel insurance market, seeking premium dollars to invest, drove rates down to levels far below that which traditional underwriting practices would dictate. This "price war" exacerbated already deteriorating conditions. Poor experience has driven many of them from the market. Unfortunately many of the traditional marine insurance companies engaged in this class of business also have withdrawn because they could not afford to continue in a business in which outflow exceeds incoming premium dollars by 60%. Furthermore, the reinsurance markets have suffered and reinsurance capacity has decreased as well. Now the remaining underwriters are starting to bring rates more into line with their costs and as a result, premiums are increasing.

Perhaps the operators do not realize that the current "crisis" is a natural economic correction for an underpriced product. Some of those in the business for many years may recall that premiums have come down considerably in the last five to ten years. Therefore, this correction—so long in coming—is perceived to be all the mere severe.

The American Institute of Marine Underwriters believes that it is premature at the present time to comment on proposed legislative responses. There are a number of studies underway such as the Library of Congress study and research being conducted through grants made through the Department of Commerce, which should give the Committee substantially more information about the nature of the problem.

AIMU and its members stand ready to cooperate with this committee in its examination of this problem. We would be pleased to answer any questions you may have. Thank you.

AIMU FISHING VESSEL INSURANCE SURVEY

	1984	1983	1982	1981	1980	5-year total
Gross premium	$27,752,000	$41,168,000	$37,579,000	$28,364,000	$25,551,000	$160,414,000
Expenses:						
Gross losses	$32,015,000	$45,296,000	$60,241,000	$32,509,000	$36,014,000	$206,075,000
Overhead [1]	$8,325,000	$12,350,000	$11,273,000	$8,509,000	$7,665,000	$48,122,000
Total	$40,340,000	$57,646,000	$71,514,000	$41,018,000	$43,679,000	$254,197,000
Loss and expense ratio: F/V insurance (percent)	145	140	190	144	170	158
Total mar. insurance (percent)	112	109	104	104	106	107

[1] Overhead: Broker/agent commission, underwriting and loss adjustment expenses, including salaries, rent, taxes, and so forth.

GEOGRAPHIC—5 YEAR

	Northeast	Southeast	Gulf	Northwest	Southwest	5-year total
Income: Gross premium	$45,954,000	$28,624,000	$25,056,000	$55,957,000	$4,823,000	$160,414,000

GEOGRAPHIC—5 YEAR—Continued

	Northeast	Southeast	Gulf	Northwest	Southwest	5-year total
Expenses:						
Gross losses	$57,818,000	$37,179,000	$34,030,000	$70,535,000	$6,513,000	$206,075,000
Overhead [1]	$13,786,000	$8,587,000	$7,516,000	$16,787,000	$1,446,000	$48,122,000
Total	$71,604,000	$45,766,000	$41,546,000	$87,322,000	$79599,000	$254,197,000
Loss and expense ratio (percent)	155	159	165	156	165	158

[1] Overhead: Broker/agent commission, underwriting and loss adjustment expenses, including salaries, rent, taxes and so forth.

AMERICAN INSTITUTE OF MARINE UNDERWRITERS,
New York, NY, October 28, 1985.

Senator PAUL TRIBLE,
U.S. Senate
Washington, D.C.

DEAR SENATOR TRIBLE: For the record, here are responses to the questions we did not have a chance to discuss at the committee hearing:

Question. How are insurance premiums established by underwriters? Do underwriters usually examine the safety record of the individual vessel and owner, or is the loss experience for vessels in the specific fishery the most important factor?

Answer. Underwriters usually establish a mean price for a particular class of business. There may possible be variances within the class for a more particular risk or for seasons of operation, geographical characteristics, etc. After these parameters have been established there is usually some consideration given to the record of individual vessels or fleets within the broader rating structure. Therefore, an owner may be faced with increased premiums even though his own loss experience has been better than others in his classs.

Question. Of the total increase in P&I rates during the past five years, can you estimate what percentage of the increase is attributable to greater jury awards as opposed to increased hospital costs and the need for underwriters to generate additional revenues to make up for a lower rate of return on their investments?

Answer. We do not believe the increase in P&I rates can be broken down into separate categories for the three components in question. It seems the first two can be considered together since the jury awards for medical malpractice against physicians and hospitals increases the cost of medical expenses just as the effect of greater jury awards increases P&I premiums. However, there is certainly more statistical creditability in medical costs than there is in the area of jury awards to fishing vessel crewmen. If the underwriter were able to eliminate this latter area of uncertainty he could predict future loss costs more accurately. As to the effect of reduced return on investments as a component in the P&I rate making scheme, while it may play a part in the underwriter's overall thought process, it is unlikely that the whole concept of rating is so precise (because of the lack of statistical creditability) as to assign it a real value.

Question. The Coast Guard has testified about its new voluntary standards. Should these be mandatory? It is likely that vessels and crew which comply with these standards will receive lower premiums?

Answer. We see no reason to expect that voluntary standards will be observed by anyone, not just fishing vessel owners. The underwriter will have to know who is complying with an acceptable set of standards and who is not. The only way this can be monitored is through survey inspections or some other form of confirmation. Furthermore, we think it is overly optimistic to believe that vessels and crew which comply will receive lower premiums, when the obverse is more likely: the only risks which would qualify for insurance would be those complying.

We sincerely hope that we have been able to make a contribution to your efforts to find a solution to the fishing vessel insurance problem. By now you are probably aware that the solution could not rest squarely on the shoulders of the insurance industry. There are other economic and social considerations that are only being mirrored by the underwriter as he considers the risk and attempts to establish a fair price for that risk.

Very truly yours,

WALTER M. KRAMER,
Vice President.

Senator TRIBLE. Senator Gorton?

Senator GORTON. Thank you, Mr. Chairman. I will defer to you.

Senator TRIBLE. Gentlemen, you have talked about the "civil justice crisis." Are liability awards escalating more rapidly in the fishing industry than they are in other sectors of the economy?

Mr. MASON. I view it, Senator, as the awards are catching up in the fishing vessel industry. So we have seen a higher escalation by reason of the fact that at least in the Gulf of Mexico I feel that the fishing vessel industry, the shrimpers have been somewhat isolated in the past from these higher awards. So it is merely a matter of catching up at this point.

Mr. EGAN. In my experience in the marine underwriting business in the last 23 years, there have been situations where an area that had not been particularly unprofitable or that had not been particularly prone to lawsuits and high costs begins to develop, and I think that perhaps that is what we were just talking about here.

From time to time, certain areas inflate or increase or become more active.

Senator TRIBLE. What are you suggesting then, that we see a lot more activity here, and we see along with that higher claims?

Mr. EGAN. We see more activity and higher awards both.

Senator TRIBLE. To what do you attribute the higher activity, Mr. Egan?

Mr. EGAN. The present system under which an injured crewman is able to present his case to a jury and obtain an award.

Senator TRIBLE. Do you view those awards as out of line? What is it that troubles you about the legal system as presently crafted?

Mr. EGAN. The problem it presents to an underwriter in determining what the cost of the loss will be today that it will have to pay tomorrow if it were controllable or understandable. It is not the system itself but the functioning of the system that creates an uncertainty to the underwriter. The underwriter cannot determine today how much premium he needs in order to pay the losses that will ultimately have to be paid tomorrow.

Senator TRIBLE. And that is due in part to the greater frequency of cases being brought to trial and the larger awards being made by judges and juries?

Mr. EGAN. Frequency, severity, and also the tendency to settle out of court on a compromise basis to avoid the cost of litigation.

Senator TRIBLE. Now, Mr. Mason, you have suggested in your testimony that previous rates were unrealistically low, and that over the last year rates have increased by as much as 100 percent, and that this was kind of a market correction. Can I assume that the market now has reached a realistic level, and that rates will be stable in the future, or should we anticipate further escalation?

Mr. MASON. We are talking a matter of supply and demand here, and the market in our opinion is still in a state of correcting itself, and that there will be a continuance of shortage of capacity and competition within the marketplace.

Senator TRIBLE. So what you are saying is that insurance rates for maritime risk will continue to escalate at a very rapid rate?

Mr. MASON. Yes, sir.

Senator TRIBLE. Now, gentlemen, you have heard the Coast Guard and other government witnesses today set forth a program of voluntary action which hopefully will improve vessel safety. In your judgment as professionals is that program going to have a positive impact? Or, more specifically, will it have an impact on the premiums that people will have to pay?

Mr. EGAN. Only to the extent that it actually reduces the losses that occur.

Senator TRIBLE. All right, Mr. Egan. You sound like a lawyer. Let me ask the question again. To what extent do you believe that those voluntary measures will reduce losses?

Mr. EGAN. I can only answer that they would have the desired effect on the fisherman who involves himself in the program and follows through on the recommendations.

As a practical matter, unless the underwriters can assure themselves that these principles are being followed, and that the desired effect was being achieved, I do not see the cost of insurance coming down or the availability of insurance improving.

Senator TRIBLE. You see, it is my concern that voluntary measures will not bring about a substantial change in behavior.

Mr. EGAN. I completely agree with that statement.

Senator TRIBLE. So if that indeed is the case, if that premise is correct, then we can anticipate that insurance premiums will continue to escalate at a very rapid rate, and these problems about which we are talking will continue in the days ahead.

Mr. EGAN. I do not necessarily share the opinion that they will continue to escalate at a rapid rate. There have been some advances——

Senator TRIBLE. Good. We are looking at some light at the end of the tunnel, so speak up.

Mr. EGAN. Again, I am going to have to resort to the explanation, so long as the current round of increases are sufficient to cover the losses that will have to be paid. The leveling process will then begin.

Senator TRIBLE. And when do you anticipate we will reach that point? One cannot say with precision?

Mr. EGAN. Correct.

Senator TRIBLE. I see. So would you anticipate, at least in the foreseeable future, that insurance rates would increase, decrease, or remain stable?

Mr. EGAN. I think there should be some leveling off, but there are still some specific, perhaps not so isolated, but some areas where capacity is withdrawing. Companies are in some instances becoming insolvent, and as such, the market is constricted not only for fish boat insurance but for other classes of insurance as well.

The recent round of competitive insurance prices has taken its toll on a number of companies.

Senator TRIBLE. Given that reality, what would you project insurance rates will do over the next year? We are told that they have increased over this last year by 100 percent. It is a rather phenomenal jump.

Mr. EGAN. In specific instances. I would think that they would probably continue to increase for the next 6 months, generally continue to increase, and then I would think they would level off. This is only an opinion.

Senator TRIBLE. I understand. And we will make this your personal and professional opinion. Share it with us if you will. Do you think that they will continue to increase, you say, for the next 6 months or so?

Mr. EGAN. Yes.

Senator TRIBLE. At what kind of rate?

Mr. EGAN. I think I will probably decide now not to offer an opinion. It is too general a topic.

Senator TRIBLE. I see. That is fair enough. Would you be more sanguine if these new voluntary standards were made mandatory?

Mr. EGAN. As a measure of the risk selection I was talking about before, when the fishermen can demonstrate to the underwriter that he is maintaining and operating his vessel satisfactorily, he will have the underwriter's attention.

Senator TRIBLE. Is it possible for the insurance industry to make these voluntary standards a part of the insurance process, to make that a condition to receiving coverage? And if so, if these voluntary standards are honored in whatever form, would that lead then to lower premiums?

Mr. EGAN. I do not want to monopolize the time here.

Senator TRIBLE. I am inviting you all to jump in here any time you feel so inclined.

Mr. MASON. I would certainly say this is one of the several viable solutions. I am optimistic that it would work, that the industry would be receptive to it.

Senator TRIBLE. How does that happen? How does the industry go about doing that? Do you have some umbrella group, an institute or your organizations can agree?

Mr. MASON. The underwriters have struggled trying to adopt standards themselves. What it would envision, Senator, is something, a program that would be worked out between the Coast Guard and the fishing industries themselves on a region by region basis, because I think we have to distinguish—

Senator TRIBLE. Fisheries are different. They have different risks and different fishing techniques?

Mr. MASON. Correct. And adopt certain standards as to safety and manning and operational capabilities, and that these standards be incorporated as a warranty under the policy to give it some teeth.

Senator TRIBLE. Mr. Egan?

Mr. EGAN. I do not differ with that opinion generally. There is a mechanism now in place, and it has been historically, whereby the

underwriter requires that the owner of the vessel, whether it is a fishboat or anything else, submits a survey of the vessel establishing its condition, valuation, and suitability for intended service. This is a document performed by a marine surveyor usually, and the standards are often more stringent than Coast Guard standards.

Coast Guard can play a tremendous role in establishing the minimums and standardization in the business, but perhaps the final conclusion of the underwriters would require something in addition to that, and certainly certification or some kind of satisfactory evidence to the underwriter that the standards are being maintained, not just that there is voluntary awareness of the compliance and acknowledgement that they will be complied with.

The underwriter, unless it is warranted in the policy, runs the risk of accepting someone's word that the standards are being complied with and then the vessel incurs damage as a result of noncompliance with some of the standards, and the loss is paid anyway. That is grossly unfair to those who are complying with the standards.

Senator TRIBLE. How can compliance be monitored?

Mr. EGAN. On a fairly regular basis of reinspection.

Senator TRIBLE. By the Coast Guard?

Mr. EGAN. By the Coast Guard, by independent marine surveyors, by some marine underwriters, in-house survey staff.

Senator TRIBLE. And that can be made a precondition to the offering of insurance?

Mr. EGAN. Yes, sir.

Senator TRIBLE. Was the industry going to do these kinds of things? It would seem to make a lot of sense.

Mr. EGAN. In certain areas it has always been done. In a period of competition underwriting standards are relaxed somewhat. Surveys are not performed as often. In some cases they are not performed.

Senator TRIBLE. You have indicated that some underwriters are no longer competing for commercial fishing industry business. Can you estimate how many underwriters are currently offering P&I insurance for fishing vessels?

Mr. EGAN. I could not estimate.

Mr. MASON. To the best of my knowledge, there is only one market, and that is London, offering just pure P&I insurance. Most American underwriters offer a combination of hull and P&I or just simply hulls. And there are probably two principal viable markets now and there may be another dozen taking small shares but not leaders in the industry.

Senator TRIBLE. Gentlemen, I thank you for your presence and your testimony today, and this is something that will require all of our attention and cooperation, so I would like to work with you and seek your advice and counsel along the way.

Thank you very much.

Next we will hear from Harold Ongstad, manager, United Marine Fund, Seattle, WA.

Senator GORTON. Mr. Chairman, I would like to welcome a constituent who has come a long way for this hearing, and who from his written testimony has helped manage a remarkably successful response to the kinds of questions with which we are dealing here today. Welcome.

STATEMENT OF HAROLD ONGSTAD, MANAGER, UNITED MARINE FUND

Mr. ONGSTAD. Thank you very much.

Senator TRIBLE. Mr. Ongstad, let me join my distinguished colleague in welcoming you and saying that we do look forward to your testimony, and I am sure that we will benefit from your very successful enterprise. Proceed, please.

Mr. ONGSTAD. Thank you.

My name is Harold Ongstad. I represent—I am the manager of the United Marine Fund, which is an unincorporated association for the protection of its members from hull and machinery losses. It was organized in 1930, and we now cover up to $400,000 on any one vessel.

There are seven other hull pools in the Seattle area. Between us we can insure up to $1,230,000 on any one vessel. All of the pools operate in the same manner to a slight varying degree. Two pools are trollers only, and two are king crab vessels only. The others are general composition pools covering halibut trawlers, seiners, draggers, and king crab vessels, et cetera.

I will refer to the United Marine Fund as the pool.

Pools work in this manner. We charge dues. We call them dues. The insurance companies call them premiums. And we charge dues of 5 percent with a 2.5 percent credit for layup. The average boat in the pool lays up about 6 months so his net rate works out to about 3.75. We work on a calendar year basis, and at the end of the year we figure our losses and expenses, and whatever is left over is declared and set aside as a refund to the members.

This is done for a period of 4 years, and in the 5th year we pay out or credit to the members' account the refund that was set aside in the first year. His net rate then becomes about 1 percent, more or less, depending on the amount of his layup.

Refunds over the history of the pool have averaged about 75 percent, and in recent years we have been doing a little bit better, about 88 percent. No pool has ever failed to pay a refund. In other words, each year the receipts take care of themselves, and we have 3 years of back refunds to add strength to the pool.

Insurance companies average 30 to 40 percent expenses, of acquisition expenses, taxes, and profits, and 40 to 60 percent losses normally. We average less than 13 percent expenses and 20 percent loss ratio is about average over a period of time. We count our investment income in with our receipts, and they average about 25.8 percent, so they take care of all the expenses and part of the claims, because we are getting investment income on 3 years the reserves that we have or refunds plus the current year.

The pool is run by a manager and a board of directors. The directors are elected by the members at the annual meeting. The directors have the control of the organization, and act on all applications for membership, determine the settlement of all claims, direct the investment of all moneys belonging to the pool, and make recommendations to the annual meeting for anything they feel would be beneficial to the pool.

In the history of the pool, there have been many, many directors, and they have always done an admirable job in all of the above duties. We have never had to expell a member from the pool except on rare occasions. We have never been in court but a handful of times, and then mostly by third parties. We have never lost a dollar through investments, and we have always been ahead of the industry in safety, et cetera.

The members of the pool also have been admirable in their membership as good, capable and careful members. They have also been incredible in their performance. It seems when a man becomes a member of a pool, he automatically becomes an excellent risk. There is no one to get the money out of but his fellow members who might be his neighbors, his friends and his relatives. There is an esprit de corps not found in most businesses.

Many of the things that we practice in the pool would truly astound the insurance company and others, too. We insure boats built back in 1911, and seldom have trouble with them. They are the old halibut schooners and halibut boats that have been fishing for years and years, and now they are in the hands of third generation family fishermen. We cover vessels to the limits of practically the whole Pacific Ocean, from the Panama Canal to Nome, Alaska, and west to 170 degrees east. We seldom survey boats. Some have been in the pool for 59 years and have never been surveyed. And we insure all of the above risks at the same premium, new or old, Puget Sound only or the Bering Sea, with only the amount of lay-up to determine to raise or lower the rate.

Recently we have had inquiries from vessel owners on the east coast, Gulf States, Washington, Oregon, California, Alaska and Hawaii who want to start pools. There seems to be a crying need for this type of coverage. We would love to see them get a few pools started because we are actually swamped at the present time and have been for the last year and a half with applications. We have had people from Alaska, Oregon, California and even Hawaii who are asking us to take them into the pool, but since we are a coherent group, we cannot know everybody, and it is very difficult to pass judgment on people that you have never seen, never fished around and so on.

The two exhibits I submitted show how a pool can work. It shows the pool's experience for the past several years. Exhibit 2 is a pool that we started years ago, and it has had 6 years at 100 percent refunds to the members. There are people in this pool that have not paid a cent for coverage for the past few years, and when they quit or retire, they have 3 or 4 years coming to them by check.

The other pool last year had a refund of 94 percent, the year before a refund of 100 percent, and the year before that, we had a bad year, 64 percent.

The insurance companies I do not think came anywhere close to that. There is a coherence to pools that is probably best served by sticking to one area or one fishery. I think they are trying to start a pool up in Alaska, and I think they are trying to start one down in San Diego, which would be a very helpful thing and take a lot off of our back.

There have been many so-called pools started by insurance agents, but they are merely a group policy started by an agent and insured in an insurance company. The difference between me and an insurance agent is that I am the pool manager, and I have absolutely nothing to say about who gets in the pool. The directors have full control of that. But an agent, he is looking to make money, and he has a great deal to say to the insurance company of who he wants to get into the insurance company.

As far as safety and risk management is concerned, we have had a very good record, I think. We have been first in many things. Bilge alarms, we required those 25 or 30 years ago on every boat that is in the pool.

[The exhibits referred to follow:]

EXHIBIT 1.—UNITED MARINE FUND GROWTH 1970–84

Year	Max. cov.	Net inc.	Int. inc.	Claims	Gross assets	Refunds (percent)
1970	75,000	418,426	50,919	202,470	1,004,945	61.04
1971	75,000	421,452	50,020	121,478	1,091,790	77.08
1972	75,000	423,545	57,497	190,436	1,211,790	85.17
1973	85,000	439,494	63,162	209,808	1,188,054	59.41
1974	90,000	471,584	65,494	24,686	1,386,729	100.00
1975	100,000	504,668	73,677	245,085	1,387,944	59.01
1976	110,000	538,796	77,464	192,812	1,456,874	74.60
1977	120,000	611,835	86,009	166,562	1,688,211	81.50
1978	150,000	719,329	107,730	155,944	1,905,749	96.53
1979	175,000	760,449	133,536	173,864	2,220,542	87.88
1980	225,000	957,368	175,469	221,261	2,497,284	83.51
1981	250,000	1,071,888	248,201	168,212	3,044,024	97.00
1982	275,000	1,105,478	295,194	556,309	3,057,699	64.98
1983	325,000	1,071,255	283,174	164,942	3,618,758	100.00
1984	350,000	1,309,243	338,442	329,356	4,050,442	94.71

EXHIBIT 2.—UNITED RESERVE FUND

Year	Max. cov.	Net income	Inv. inc.	Gross asset.	Claims	Refund (percent)
1968	10,000	5,989	51	5,390	232	77
1969	20,000	25,651	619	28,511	713	88
1970	35,000	50,606	2,668	72,740	0	91
1971	40,000	80,060	3,656	111,677	36,172	48
1972	50,000	109,832	8,206	209,732	0	94
1973	55,000	138,732	13,835	321,480	793	97
1974	60,000	162,759	22,837	439,622	872	100
1975	65,000	172,359	29,682	502,104	75,000	60
1976	75,000	200,847	28,295	582,313	10,813	95
1977	90,000	240,455	41,317	693,722	8,024	100
1978	100,000	290,712	48,976	775,360	143,492	56
1979	120,000	316,236	57,191	915,217	1,173	100
1980	140,000	293,080	79,539	1,065,635	2,606	100
1981	150,000	327,401	97,807	1,194,828	14,102	100
1982	175,000	354,574	124,738	1,410,523	34,404	100
1983	200,000	378,235	127,249	1,511,281	26,876	100
1984	200,000	387,899	144,488	1,571,174	86,728	100
Total, 17 years					442,000	1,506
Average, 17 years					26,000	88.59

Total losses paid

1971: *Cape Mendicino*	$35,000
1975:	
White Cap	40,000
Signe S	35,000
1978:	
Julia Marie	75,000
Delores J	60,000
1984: *Anna Louise*	75,000
	320,000

Senator GORTON. Excuse me. Could I interrupt with a couple of questions?

Our buzzer just went off. We are going to have to leave in less than 10 minutes to go and vote.

This has been remarkably successful. I do take it, however, that you choose who you are going to allow into your pool, or your board of directors does. A person is not automatically eligible just because they have the right kind of boat or do the right kind of fishing?

Mr. ONGSTAD. No.

Senator GORTON. So you are making a judgment that you are dealing with responsible people.

Mr. ONGSTAD. Right.

Senator GORTON. And you pointed out that many of them know one another, they are even related to one another, and they know perfectly well that any losses they have come out of the pockets of their friends and not from some big insurance company back east somewhere.

Mr. ONGSTAD. Right.

Senator GORTON. I may have missed it here in connection with these, your claims. Are you—do these pools cover only loss or damage to the vessels, or do they cover their P&I claims as well?

Mr. ONGSTAD. We do not cover P&I.

Senator GORTON. So you would say total losses paid out here on the second of these, those are ships that I take it were lost or destroyed?

Mr. ONGSTAD. Right.

Senator GORTON. Are there any pools anywhere which cover P&I claims?

Mr. ONGSTAD. We operate one in our office. I operated it for about 12 years, and in that 12 years we had $14,000 in losses and we collected $500,000 in premiums. But in the last few years it has gotten quite a bit worse. It has escalated a lot, but we are still at the same rate basically that we were 17 years ago.

Senator GORTON. So it is possible to use the pool system for P&I as well as for vessel loss.

Mr. ONGSTAD. Yes. You probably have heard of Harold Larkin. They had a pool that was started for liability insurance among halibut boats, and basically halibut boats.

Senator GORTON. Now, when you tell us about these refunds, after you get a refund, you hold onto that refund, it stays in the pool until the end of the 5th year?

Mr. ONGSTAD. Yes, for 4 years.

Senator GORTON. And from that point on it is credited against the next year's dues?

Mr. ONGSTAD. Yes. It rotates year after year.

Senator GORTON. That is why you say many people in these pools have in effect have not had to put anything more at all after that 5th year.

Mr. ONGSTAD. Yes, that is right.

Senator GORTON. Thank you.

Senator TRIBLE. What is the criteria that your board of directors uses in accepting new members? Is that spelled out?

Mr. ONGSTAD. Personal knowledge of their vessel and of their character, and if they do not know them, we ask for a list of people they know in the pool, we send them a membership list, and they go through the membership list and list people that they know, and we get recommendations from them, from people who operate in the same area and the same fishery.

Senator TRIBLE. Mr. Ongstad, I appreciate your testimony today.

Senator GORTON. Excuse me. One more question.

I think you said something about this. I take it that the pool can expel a member if it wishes to do so?

Mr. ONGSTAD. Yes, we can.

Senator GORTON. But you have done that only on extremely rare occasions?

Mr. ONGSTAD. Just about three or four cases. A member can turn bad after a few years. Sometimes they get a divorce and they get kind of wild.

Senator GORTON. Thank you, Mr. Chairman. I think we had better quit while we are ahead.

Mr. ONGSTAD. I would like to mention that there are, I understand, over 40,000 fishing vessels on the west coast of the United States, and there are seven pools in the Seattle area, and I do not think that with duplication we insure more than 800 vessels.

Senator TRIBLE. Well, we have benefitted from your experience and your testimony. We thank you for being here.

We will recess to go vote. I will be back promptly, and then we will hear from a final panel, Mr. Lassen and Mr. Nixon.

[Brief recess.]

Senator TRIBLE. The hearing will commence once again.

We welcome at this point Mr. Nixon and Mr. Lassen. We look forward to your testimony.

STATEMENTS OF THOR LASSEN, EXECUTIVE SECRETARY, NATIONAL COUNCIL ON FISHING VESSEL SAFETY AND INSURANCE; AND DENNIS W. NIXON, GRADUATE PROGRAM COORDINATOR, UNIVERSITY OF RHODE ISLAND

Mr. LASSEN. Thank you very much, Senator.

I certainly appreciate being here again on behalf of the Council. We would like to thank you again and the other members of the committee for your continued interest in this issue on fishing vessel insurance.

At the committee's earlier hearing on March 25, fishing industry representatives presented testimony to you on availability and cost of vessel insurance and the impact on the fishing industry. Concern was expressed over some of the apparent abuses of the Jones Act and general maritime statutes that has resulted in excessive court awards and settlements.

In discussions that followed the hearing, it seemed clear that some analysis of the current system we use to compensate injured fishermen was needed before we could make any recommendations to resolve the issue. So with the support of members from the Senate, yourself, and from members of the House Merchant Marine and Fisheries Committee, the Council received direct financial assistance from NMFS to initiate a comparative analysis of the costs associated with the current method of compensating injured fishermen to several alternative methods. In very general terms, data from insurance awards and settlements over the last five years were used to examine costs of various model compensation systems.

As you know, professor Dennis Nixon from the University of Rhode Island has been working as the principal investigator for the council throughout most of this summer. We did establish a coordinating committee made up of fishing industry representatives to provide guidance on the project, and had other people involved, specifically Chris Theodore, a professor from the University of Boston; Ward Mauck, the American Institute of Marine Underwriters; and Richard Fein from the Insurance Technical and Actuarial Consultants Corporation to help with quality control and the structure of the data collection and model analysis phases.

This was the team that took on this project. We would like to recognize first of all, those insurance companies that supported our study and provided the data that we needed, and we would like to especially recognize Dennis Nixon for all his efforts to make the project a success. I know he spent a lot of hours criss-crossing the country collecting settlement data and talking to fishermen and insurance people on some of the ideas for alternative compensation models.

We are here today to give you a report on the preliminary findings and conclusions and indicate that we will have a final written report completed and submitted to the committee and other interested parties by the end of the year. Mr. Chairman, at the March hearing, I informed the Committee of a survey that the Council was conducting on various recommendations that had been raised at meetings and conferences over the last few years on vessel safety and insurance. Of the 110 people who respponded, 65 were from the fishing industry, 16 from insurance or marine surveying companies, 10 from Government or sea grant institutions, 1 union official and 20 with unidentifiable affiliations. I have attached a summary of the survey results for the Committee's information.

At this point, I will turn over the details of the study to a most knowledgeable Dennis Nixon, who is fast becoming an expert nationally in this area.

Senator TRIBLE. Mr. Nixon, you are welcome.

I have in my hand here a 35 page preliminary report on Fishing Vessel Injury Alternative Compensation analysis.

I would invite you to summarize your preliminary report, but the full report will be made a part of the record by reference.

Mr. NIXON. Thank you, Senator. It is a pleasure to be here again. It is always exciting for an academic to have a chance to work on a real problem in which someone wants to know some answers, to hear some suggested recommendations.

As you said, it is a long report, and I will just summarize the highlights of it for you and perhaps give you some of the tentative recommendations I have at this point that I think are worthy of consideration by the Congress.

As Thor said, this is a preliminary report. Some of the numbers are subject to change. We have 80 percent of the cases that we are looking for now complete. There will be some I think minor changes before the final report in December, but generally we have not been terribly surprised as we have gone from region to region. I tend to think the remaining 20 percent of the cases will just more fully support the conclusions that we are offering here today.

After our last meeting, as Thor said, representatives from the House side met with representatives from your staff, and people from the administration, to set up this particular study to determine just how bad the problem was. I think there were a lot of—there was a consensus when we last met that we had a problem. You heard more about that today. But there was not any quantitative information about how bad the problem was.

This study was designed to provide some quantitative information on the extent of the problem, to determine just where the abuse was in the system. Everyone has been arguing abuse here, there and everywhere. The effort here was to take a look at enough cases that we could see some patterns emerging, to spot the areas of abuse, pinpoint that and then make our recommendations to eliminate wherever we found abuse.

The study once again was guided by three basic principles: first, that any result that we recommend would be fair to commercial fishermen; second, that it would be affordable to vessel owners; and third, would make sense to insurance companies.

You heard those statements from a variety of witnesses earlier today. I might add that another consideration I had was in recommending a solution that has a chance of being implemented by Congress.

I have heard from a variety of people that, for example, suggesting that we use the fisheries loan fund for our purpose here. We might run into some difficulties with the administration. I did not want to recommend a solution that would have to be rejected out of hand for a variety of reasons.

So those were the factors that guided the design of our research project. We looked at a weighted random analysis of 500 cases from around the nation. We weighted the analysis to take into account the fact that the different regions contribute different amounts to the nation's catch by value. We looked at a target period of five years, from 1980 to 1984. I might add we have taken a look at a few cases from 1985, and as the curve goes up generally, the 1985 cases leap

upward. So we do not have a good enough sample to present you with hard data in 1985, but I can tell you just as a way of anecdote that it looks even worse for 1985 than it did in 1984.

We gathered cases from three different sources; from insurance companies, from insurance brokers, and from claims adjusters. Brokers and adjusters typically work with a number of companies, and therefore we focused our research at those levels to get the greatest cross section of cases as possible.

For each region we had at least three companies represented in terms of the files we were drawing upon, so that we were not just getting the one company that had the disastrous cases. We made sure that we had a spread. When we were gathering cases, we made an effort to pick every third file so that we had a random cross section, we were not just picking out the thick ones where it was obvious they have gone to litigation.

So I believe using all the standards that are used by social scientists in conducting a random analysis, we have followed all the rules, and what you have here is a pretty good cross section of cases from around the country.

What did it show? In general, the figures were what one could expect. There was an increase in average awards during the 1980 to 1984 period. The total average award was $32,000. The total average award, however, if you deduct attorneys' fees, would be about $24,000, and that is the number that I was most concerned about, the average net award to the commercial fisherman. The idea here is that we do not want to design a system which does not preserve many of the basic rights that fishermen have enjoyed since we incorporated the concepts of maintenance and cure and unseaworthiness into maritime law.

The medical costs increased substantially in 1983–84, largely because of the closure of the Public Health Service Hospitals in 1981, the ability of fishermen to make use of that service. Since our numbers are generated by award date, we saw the impact of the 1981 closures at the end of 1982 and throughout 1983, and we see a very huge increase in the amount of medical costs paid under the P&I policy.

One of the most interesting facts that we learned is that the average period of disability is only 14 weeks. That has a large impact on the recommendation, the principal recommendation that I will present to you in a few minutes.

The average fisherman was 33 years old with one dependent on a vessel 110 feet long. His average income was $24,000.

The alternatives that we examined were really three. We took a look first at how well the current system was working, and this was our effort to figure out where the abuses took place. As you know, an injured fisherman has three potential routes of recovery, maintenance and cure, Jones Act, and unseaworthiness.

We found that maintenance and cure in theory is a very good concept. It is a no-fault recovery that is designed to pay full medical ex-

penses until someone is cured to the maximum extent practicable, and while he is undergoing this cure, the vessel owner is required to maintain him. The problem with that remedy has been, however, maintenance figures have been maintained at an artificially low level, and they are not consistent around the country. On the east coast of the United States, they are held at $8 a day by an old NMU contract in New York, and by tradition along the Gulf Coast. In the northwest, which in general—I am sorry Senator Gorton is not here to say this—but can be found to be more progressive in many areas in this regard, we see maintenance awards up to $25 and $30 a day. But there is no consistency around the country on this point, and I think what we have here is a potentially good remedy which has been languishing for lack of attention.

The Jones Act and unseaworthiness causes of action, however, are where we have found the problem, relatively minor injuries with relatively short terms of disability producing very large recoveries, well in excess of what someone's weekly wage was, for a variety of factors that you are certainly familiar with in terms of problems with the jury trial system in America today.

I want to, before I get into the alternatives, specifically preface my remarks by saying that you heard comments about the fishing industry and the insurance industry today which complicate any potential remedy. They are two major variables. In general, we found—and this should be no surprise—is that where an industry, a fishery was in trouble, the accident rate went higher and insurance costs were higher. Simply stated, in successful fisheries people do not seem to get injured as often, and when they do get injured, they keep working with the cast on their arm. They do not want to miss out on that next trip. But when a fishery has not been successful, there is a much greater tendency to wait out the next few trips and see what the legal system can bring.

Virtually every major fishery in the United States is facing the problem of declining stocks through overfishing or poorly understood natural causes, competition with cheaper imported product, reduction in export markets because of the strength of the dollar, loss of stocks due to boundary delimitations, overcapitalization as a result of the fleet expansion that was discussed by Captain Piche and Mr. Gordon.

The insurance industry you have heard about is in disastrous shape today. My research fully supports the statements made by representatives of the insurance industry. They have been losing money. The combination of a decrease in interest rates offsetting their investment income has made their picture rather bleak, and because fishing insurance is such a small part of marine insurance, which is again such a small part of property casualty insurance, there really has not been that great of an interest by the managers of the companies to get involved in any kind of serious reforms. It is simply too small a part of their book of business. They would rather just say close it and move on to something else.

Those are two factors that are serious and are going to affect any potential solution, but ones that obviously I cannot address. It is a good part of the nation's problems I have summarized in 2 minutes, and we cannot cover all that.

The alternatives we looked at involve an improvement of the current system, taking a look at the current system, taking a look at the 1976 statute that was introduced. I commented on that the last time I spoke here as a witness. The possibility of raising maintenance to $30 a day, and finally, the recommended alternative which I will talk about in a second.

We found generally that the workmen's compensation solution, as expressed in the 1976 act, was difficult to quantify because there were a number of factors required in the implementation of that law, including the age of dependent children, for example, which was simply not available in the files that we searched, so that the numbers we have for the 1976 ad hoc committee recommendation show a fairly substantial decrease in awards to fishermen, but I am not completely confident about those numbers because the information required to make that program work is so extensive, it was not readily available in the files of the insurance companies.

I was frankly very surprised as I toured all of these different companies and went through their files, and I must publicly thank all of the companies who gave me time of their employees and space to work, at how little the insurance industry has studied its own losses. In fact, I ran into just one company that had a very thorough analysis of its claims and was making projections based upon its past five year history, only one example. In many other cases, the rule was that company officials, underwriters, were not really sure what was in their company's claims files, and judgments being made on premiums to charge were more likely guided by what they read in yesterday's National Fisherman than on a solid claims analysis.

It is a visceral thing, setting premiums, and I think one of the reasons the premiums have gone up so much is because underwriters have heard everyone else is raising their premiums so much, and it gets to be a kind of a jumping on the bandwagon phenomenon.

At any rate, although we generated lower numbers using that bill, for a variety of reasons I am not recommending that that alternative be pursued. First and foremost, there is a—I am not sure why—a substantial fear among the members of the fishing industry about getting involved in a compensation system, and I simply had to recognize that. This has been expressed to me in every region of the country. It would alter the basic relationship of the vessel owner and the crew from independent contractor status to employee status, and neither the individual crew member nor the vessel owner seems to want that, and I have to respect that in my recommendations.

The second major point—and this was critical regarding the implementation of a proposal—is that it would cost the government a fair amount of money to set up the administrative structure to operate a fishermen's compensation system. Boards would have to

be set up, regulations, a whole new raft of bureaucrats would be created to run this program. And I have received, shall we say, "strong guidance" from people in the administration that this proposal would not be favorably received if it meant spending a lot of money, and it would.

The recommendation I would like to make and leave you with is based upon the current system, and the numbers that we generated based upon this recommendation are quite positive. I believe it in fact will address all of the major considerations that I stated at the outset.

First of all, I believe that we ought to raise the maintenance figure by statute to $30 a day. Right now judges set maintenance figures at whatever they feel is appropriate, and I think there is, as a result of that, we are not seeing the full benefit of that remedy seen on either the east or the Gulf coast.

A uniform $30 a day figure would mean the equivalent of an $11,000 a year disability income.

The second point I would like to make is that I would like to take advantage of an example that the British developed, and that is using a disability income program for commercial fishermen, not currently available in the United States. This program would work as follows. If we assume that the fisherman is the average fisherman with an income of $24,000 a year, and that the maintenance figure acts as the floor of $11,000 for disability, that fisherman would be able to purchase $13,000 of disability income insurance. That insurance would cover his disability, whether or not it occurred on the job—and this has been one of the major concerns of commercial fishermen who have good medical coverage if they are hurt on the boat, but have nothing when they are driving home and get hurt in a traffic accident. And if they are not working, they do not get paid. So I think the idea makes sense. It adds a positive benefit for the commercial fisherman.

The cost figures, looking at what the British fishermen are paying—and I know one cannot directly transfer to the American model, but I would estimate nothing more than perhaps $200 a year for that kind of a coverage for a one year period.

The third point, however, is critical to the cost containment problem, and that is that if we have implemented points one and two and we have a fisherman able to receive essentially his full income through the combination of increased maintenance and a disability income program, for which, by the way, he is paying, I would suggest to you that we could bar that fisherman, bar his claims or suit under the Jones Act and unseaworthiness doctrines for all temporary disability cases, under a year in duration. For a case beyond a year in duration, which is clearly a serious injury, a permanent injury, either partial or total, I think he ought to be entitled to go to court as he is doing today.

What we found in our research was that the permanent cases were not the problem cases. Admittedly they cost a lot of money, but per-

manent disability cases cost a lot of money no matter what legal system you are working under. The numbers were in the same ballpark as the numbers being generated either through out-of-court settlements or at a trial.

By creating a system in which a fisherman is receiving essentially his full income, he is receiving a more generous compensation system than any other kind of working man, and yet by implementing these three recommendations, my figures indicate that the recommended alternative would drop the average award by a third, from $32,000 to $24,000. There will be some attorney involvement for cases that go beyond a year in temporary status or any permanent status, so that after attorney's fees, the net award of the fisherman will be $20,000. But cost to the insurance companies under the P&I policy of only perhaps $20,000, because on the average disability of 14 weeks, there would be a contribution of approximately $4,000 from the disability income insurance policy.

So the bottom line is that for the average award, the insurance company paying out under the P&I policy would be paying out approxiately 40 percent less, and yet the fisherman would be seeing only a 16 percent reduction in the amount of money he is seeing in his pocket.

Keeping in mind the fact that the most typical example of abuse that I found throughout all regions was the temporary total disability case, perhaps the broken arm, some kind of a fracture, a cut, in which someone made use of the legal process and received awards far in excess of what they would have been entitled to under any other kind of compensation scheme, it was those awards I was trying to prevent, and implementation I believe of these three recommendations would eliminate that kind of abuse, because a seaman under those circumstances, a fisherman, would only be entitled to his average weekly income based on his previous year's tax return or any other kind of indicia of income.

That is it. We have had hearings on this subject now since 1957. The situation is such with regards to a number of fisheries that they might not have the chance again to appear before you. The situation in San Diego is clearly the worst in terms of the frequency of injuries and the size of the awards. To give you a concrete example, 5 years ago there were 140 tuna seiners operating out of the Port of San Diego. Today there are 80, for a variety of reasons, everything from imported tuna to the impact of the Marine Mammal Conservation Act. But even though the number of vessels has been cut nearly in half, the number of claims has increased by one and a half. And the size of the average award goes right off the chart.

Unless we can do something like this which will assure the insurance companies they will know now how much basically each kind of injury is going to be worth, unless we do something like that, this problem I think will become a fatal one for sectors of the U.S. fishing industry.

Thank you, Senator.

Senator TRIBLE. Thank you, gentlemen, for your presentation and for your thorough investigation of these problems.

Once again, the timing of your final report?

Mr. NIXON. December 31, 1985.

Senator TRIBLE. And it is your view, your preliminary view, that the additional investigation and consideration will simply confirm your preliminary assessment?

Mr. NIXON. Yes.

Senator TRIBLE. Who would purchase this disability policy that you suggest, the vessel owner or the individual crewman?

Mr. NIXON. The way the issue is handled in the United Kingdom is that the vessel owner purchases the policy for, say, five crew members and then during the course of the year, the amount of individual premium is deducted from the crew member's crew share out of a particular trip so that there is no actual cash coming out of his pocket, and that also allowed, by the way, for the fact that when crews do change frequently, if you were working on board this vessel, clearly you are covered under that vessel's disability income policy. If you move on, you do not take that policy with you.

Senator TRIBLE. How much did you suggest that coverage would cost?

Mr. NIXON. Well, in Britain, the coverage for 10,000 pounds for a 2 year period was 45 pounds—excuse me. It worked out to about $200, and I am saying let's cut that in half, even. Let's make it a one year disability policy, assuming that companies are less willing to get involved in that in the U.S. market. I have spoken to the president of the company who underwrites that program in Britain, and he will quite frankly tell you or I that they are making money at it.

If the average term of disability is only 14 weeks, that is not a terribly great amount of money.

Senator TRIBLE. Tell me about these Coast Guard voluntary safety programs. Are they going to work?

Should part or all of those program initiatives be made mandatory?

Mr. NIXON. Well, Senator, I think if you did make them mandatory, you would see a difference very clearly. However, the question is at what cost are we willing to make these mandatory? With some 33,000 fishing vessels out there, the Coast Guard today has trouble keeping track of the vessels. They have to be inspected now. If we threw this additional burden at them without an enormous amount of additional funding, they could not do the job.

I think that there is voluntary and then there is voluntary. I like the fact that the Coast Guard has used the best and the brightest and have a great deal of faith in the fishing vessel task force under Captain Piche's leadership. They have done an excellent job. I have seen their work. It compares favorably with the 1975 British fishing vessel safety standards which have in fact produced I think a safer fishing industry in Britain. We have got a much larger industry

here, though, than they have in Britain, and a much more difficult one to keep track of.

I think the best way to handle those standards is to convince the insurance industry that before any hull policy renewals go out, that vessel must meet these standards. If the insurance industry does not take advantage of what is essentially a gift from the U.S. government to help them do their business better, I cannot quite understand the way they conduct their business.

I think it is a perfect opportunity for them to incorporate this into their underwriting guidelines. I would be very surprised and disappointed if they did not.

Mr. LASSEN. If I could add on to that, Senator, if we take the example that Dennis brought up about San Diego where you have one of the most sophisticated and safety conscious fleets in the nation, the tuna industry, they are still the prime example of where most of the insurance problems are occurring. It raises the question of whether mandatory safety requirements would eliminate the insurance problem that we are dealing with today.

Mr. NIXON. It has made a big impact on hull insurance, though. In San Diego they are paying very low hull insurance premiums. Where they are getting killed is in the P&I insurance where they are paying as much as $14,000 a man for P&I industry, and that is a function of the other economic conditions within that industry.

Mr. LASSEN. The other point that I wanted to raise was in a survey that we conducted, we did find out that there is support in the fishing community to have insurance companies themselves require stricter guidelines or vessel conditions. So there seemed to be some interest in asking the insurance companies to police the fishing industry through underwriting requirements for reviewing a policy.

Senator TRIBLE. Gentlemen, I thank you for your testimony, and for your good work.

This preliminary document answers a lot of questions and makes some very credible suggestions to solve these problems. I thank you for your leadership and look forward to working with you.

This hearing stands adjourned.

[Whereupon, at 12:17 p.m., the subcommittee recessed subject to the call of the chair.

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF WALTER L. SHAFFER, PRESIDENT, AND WILLARD A. SILCOX, DIRECTOR, SOUTH CAROLINA SHRIMPERS ASSOCIATION, INC.

The Trawler Insurance problems in South Carolina are about to reach the critical stage. Of the six or more companies that had been writing shrimp trawlers, only one remains and this one will not extend coverage into the Gulf of Mexico. The Marine Office of America, which had been the largest company in the market, has notified everyone that they will not renew when the existing policy expires. Another instance of nonrenewal of which I am familiar, is the one remaining company refusing to renew because the individual had a $2,200.00 claim.

We now have trawlers that wish to go into the Gulf of Mexico to supplement for S.C. Income, but are not able to get Gulf coverage. We have a bank with a Mortgage on a trawler that cannot get insurance, and we have many trawlers whose annual premiums are higher than their annual mortgage payments.

If the trend continues, we can expect this to have a catastrophic impact on the banks that are holding shrimp boat mortgages. Also many of the fishermen who are not mortgaged, will be forced to operate without insurance.

The solutions are not clear-out, but some possibilities might include:

1. Capping the liability by changing The Jones Act.
2. Requiring a Coast Guard License for Trawler Captains.
3. Requiring an annual haul out.
4. Reduce the Moral Hazard by requiring a credit check or proof of financial solvency as a requirement for a select class of insurance.

VIRGINIA GRADUATE MARINE SCIENCE CONSORTIUM,
UNIVERSITY OF VIRGINIA,
Charlottesville, VA, April 2, 1985.

MR. BILL MIMS,
Senator Paul Trible's Office, Washington, DC.

DEAR MR. MIMS: Being cognizant of Senator Paul Trible's interest in the mounting costs of marine insurance for fishing vessels, the Senator's membership on the Senate Merchant Marine Subcommittee and the recent hearing on vessel safety and insurance problems, I thought you might be interested in some of the activities with which the various Sea Grant programs have been involved regarding the fishing vessel safety and insurance problems. As Director of the Virginia Sea Grant College Program, and President-Elect of the Sea Grant Association, I would like to briefly describe some of these activities.

The Sea Grant network has over the past few years become involved in this general problem by initiating both research and marine advisory activities in an effort to respond to industry needs. For example, Sea Grant researchers at the University of Washington have conducted research addressing fishing vessel stability under various natural wave regimes. Additional stability studies were also initiated to determine the effects on stability of "converted" vessels, that is vessels originally designed to harvest one particular species but for one reason or another were modified by the addition of new gear to be able to harvest another species. The addition and/or reduction of various gear types aboard fishing vessels appears to have a marked effect on the stability of many of these vessels. A similar effort designed to investigate the stability and loading characteristics of converted shrimp to scallop fishing vessels in Florida was recently completed by researchers supported by the Florida Sea Grant College Program. Finally, a Rhode Island Sea Grant study is investigating the safety and stability of modified or converted Gulf of Mexico fishing vessels which fish off the coast of New England under different natural conditions.

All of these research efforts are tied closely to Sea Grant marine advisory activities. Sea Grant marine advisory personnel throughout the national network work closely with fishermen, insurance underwriters and other pertinent service organizations, such as the Coast Guard, in an effort to reduce the severity of this problem.

One way in which the results of the above research projects, as well as other relevant information, is made available to the fishing industry is through Sea Grant sponsored workshops and conferences. The Rhode Island Sea Grant College Program sponsored a "Fishing Vessel Safety Conference" in 1983 and, working with the U.S. Coast Guard, supported a second conference in 1984. A very useful publication entitled "A Commercial Fisherman's Guide to Marine Insurance and Law" was also written and published with the use of Sea Grant funds. Senator Trible alluded to this publication when Mr. Dennis Nixon, the publication's author, recently testified before the Senate Merchant Marine Subcommittee. Incidently, this has sold out of two printings of 3,000 copies in less than a year. A complementary publication, entitled "Safety at Sea: a Guide for Fishing Vessel Owners and Operators", was produced by the Texas Sea Grant College Program and is available for use by the Sea Grant network. Similar conferences on vessel safety and insurance have been had in the states of Florida, Alaska, New Hampshire, California, Oregon, Washington and Virginia. I would like to emphasize that these efforts have involved the cooperation of a number of other organizations such as the Coast Guard, local hospitals and fire fighting units, and insurance underwriters in a conscious effort to bring all parties involved together to discuss the matter.

As mentioned above, the Virginia Sea Grant College Program has also been involved in addressing this problem. The Virginia Sea Grant Marine Advisory Services has for a number of years operated a fishing gear assistance program through which fishermen may solicit advice in the design, layout and maintenance of gear aboard their vessels. For example, fishermen may request advice on net maintenance, winch layout, placement of running rigging and suggestions on the safest way to convert equipment aboard their vessels. More recently, the Virginia Sea Grant Marine Advisory Services sponsored a "Fishing Vessel Safety and Insurance Workshop" to further address this pressing problem. Over 70 vessel owners, watermen, insurance company officials, commercial fishing businessmen and emergency medical technicians attended this workshop. The Conference included a panel discussion of the issues, emergency first-aid and hypothermia demonstrations, hands-on demonstrations of on-board fire fighting techniques and a live crashboat helicopter demonstration by the U.S. Coast Guard. From the response of the workshop participants, the conference was very successful in bringing the various parties involved together and facilitated considerable discussion which we hope will help lead to some easing of the crisis.

The problem of fishing vessel insurance is complex and immediate; however Sea Grant in Virginia and throughout the nation continues to make a positive effort to reduce its severity through research, education and advisory activities.

This letter is by necessity brief. However I would be pleased to provide you with any further information you may require. Finally, I would like to thank Senator Trible for his continued support of Sea Grant, and I hope this information will be of value to you and the Senator.

Sincerely,

WILLIAM L. RICKARDS,
Director.

STATEMENT OF PETER J. LUCIANO, EXECUTIVE DIRECTOR, TRANSPORTATION INSTITUTE

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide this statement for the record of fiscal year 1986 authorizations for maritime programs of the U.S. Department of Transportation and the Federal Maritime Commission. The Transportation Institute is a nonprofit research and educational organization dedicated to the preservation and promotion of a strong American maritime industry. Our 174 member companies operate U.S.-flag vessels in the Nation's foreign and domestic shipping trades, including the Great Lakes and inland waterways.

The situation our industry faces today is one of continuing erosion. While most of the country has prospered under the resurgent U.S. economy, the U.S. merchant marine has with few exceptions continued its precipitous decline. Federal maritime policy has been ineffective in reversing this decline. If anything, many of the proposed policy changes and cutbacks in government support have further hastened the industry's deterioration. Today, fewer than 400 private, commercial oceangoing U.S. merchant vessels are actively employed in American commerce. Over half of these vessels ply the coastwise domestic trades, while the remainder of the fleet must fight for work in the U.S. foreign trades. In these foreign trades, American vessels still carry only about 5 percent of our Nation's own imports and exports.

None of this of course, is news to this Subcommittee. The Subcommittee and its members are well aware of the current situation, and have continually made efforts to correct the industry's problems and direct the U.S. merchant marine back up the road to recovery. We commend this commitment, and appreciate the Subcommittee's continuing efforts to adequately fund existing maritime promotional programs which represent our country's longstanding Congressional commitment to a strong and healthy merchant marine. Over the past few years, this support, along with notable efforts by individual committee members to thwart attacks on basic elements of U.S. maritime policy such as the Jones Act and cargo preference laws, has been extremely helpful and timely.

The Transportation Institute also supports full funding of these existing maritime promotional programs. One of the most important responsibilities of any national government is to protect its country from threats to its national security, a vital component of which is a strong commercial maritime capability. However, this capability and security do not come easily or without cost, and a nation must be prepared to develop and sustain it. Other nations of the world have recognized the importance of a strong merchant marine to their economic and national security, and have increased their emphasis on building merchant fleets. Support for these fleets has come indirectly in the form of extensive tax benefits, and directly through substantial government subsidization. Nearly 70 countries also enforce some form of cargo preference policy designed to ensure employment for their national fleets.

The United States, meanwhile, has been moving in the opposite direction, decreasing support for its fleet in the name of free trade. Government programs originally enacted to help American vessels compete against foreign fleets have been eliminated or curtailed, and government cargo preference policies have been repeatedly evaded or ignored by government agencies. It is imperative that the U.S. Government soon reverse this trend and recognize the fact that a free market simply does not exist in the world of international shipping. We must begin developing a viable long-term maritime policy which not only recognized the reality of today's world shipping market, but also responds with appropriate policies and support programs to revitalize and promote growth in the U.S. maritime industry.

We realize that your task in this endeavor is a difficult one. With the growing concern over the federal budget deficit and increasing pressure for fiscal constraint, implementation of an extensive promotional policy may seem difficult to justify. But when one considers the importance of the merchant marine to national security, these costs become relatively small. Moreover, and more importantly, failure to fund the maritime link in U.S. defenses only serves to compromise the effect of the hundreds of billions of dollars being spent on other U.S. defense efforts, and draw the attention of an able and observant foe.

The Transportation Institute is eager to assist this body in developing a program to revitalize the U.S. maritime industry. As an interim measure, however, we urge full funding of existing promotional to help sustain the fleet at present levels and provide a solid base from which to build. We also urge that any modifications made to existing programs before a permanent long-term policy is enacted be constructive in nature, and not destructive. Proposals such as the Administration's plan to increase the annual fee for the Title XI construction loan guarantee program and impose an additional up-front fee of five percent for new loan guarantees and loan advances is without any evident cost-based rationale, and would only act to diminish the attractiveness of the program and further weaken the industry.

This proposal and others like it only reflect an anxious willingness to raise additional non-tax revenues at the expense of program effectiveness. Particularly in the case of the Title XI program, such a revenue enhancing scheme is wholly without merit. Just last year, Title XI was streamlined to make it much more efficient, and modified to correct any default problems it has previously experienced. The program now costs the government little or no money, and provides substantial benefits to the industry.

While I have this opportunity, I would like to address another issue which, while not directly within the purview of this hearing, is certainly of concern to you because of its impact upon the U.S. merchant marine. Increasingly over the past several years, U.S. maritime policy and the fate of the U.S. merchant marine has been dictated not with due and thorough consideration as to how federal policy and program alterations will affect the industry, but indirectly, through modifications made to associated programs by non-maritime Congressional committees, and by political budgetary decisions. The Accelerated Cost Recovery System (ACRS) is such a case. Enacted in 1981, the ACRS significantly decreased the depreciation schedules for most categories of capital expenditures, including the acquisition of merchant vessels, in order to aid U.S. industry in competing against heavily supported foreign

competition. For the U.S. merchant marine, the decrease in the depreciation life to merchant vessels from 14 and one-half years to five years has become an important incentive to invest in U.S.-flag shipping, and has proved instrumental in sustaining the U.S. merchant fleet over the past few years. Accelerated depreciation for merchant vessels has facilitated the replacement and modernization of a portion of the active U.S. fleet, and thereby permitted many American operators to remain in business. Without this accelerated schedule, replacement of many old and inefficient vessels would be a much less certain prospect, and the industry would have experienced an even steeper decline that it already has.

Unfortunately, the tax reform legislation recently proposed by the U.S. Treasury Department would scrap the ACRS, and eliminate this important incentive to invest in new U.S.-flag shipping. The stated rationale behind this proposal is a belief that the ACRS has become an ineffective government giveaway that skews domestic investment decisions and wastes the taxpayer's money. Whether or not this is true is certainly subject to debate. For the maritime industry, however, the ACRS has become an effective and essential development policy, countering even more generous foreign depreciation policies. The rationale set forth in 1981 for accelerating the depreciation schedule for maritime is as compelling today as it was then.

Of and by itself, the ACRS comes nowhere close to matching the tax benefits provided by other maritime nations. But by partially offsetting this foreign advantage, it greatly enhances the competitive position of U.S.-flag operations. As highly competitive as the international maritime market is, the reduced costs and increased cash flows which result from the ACRS have been significant enough to help improve the investment climate for American shipping to just above the marginal-risk threshold. This has been enough to cause many investors to consider U.S. shipping over foreign interests. Absent this economic incentive, investment in U.S. maritime assets would be much less attractive, and replacement of U.S. merchant vessels to compete in the U.S. foreign trades would be nearly impossible.

Also included as part of the tax reform legislation is a proposal to eliminate tax-deferred Capital Construction Fund (CCF) accounts. These accounts are as important an incentive as the ACRS in replacing vessels in the U.S.-flag fleet. Eliminating this tax deferral of accumulated shipping income would discourage companies from replacing their older vessels with more efficient, internationally competitive ships, and threaten the ongoing modernization of the U.S.-flag merchant fleet.

The questions of whether or not to retain the ACRS and CCF accounts will be an extensively debated subject in this Congress. To the American maritime industry, it will not just be a debate on general national economic policy, but another issue effecting the core survival of the industry. We urge the members of this Subcommittee to work to retain this depreciation and income-deferral treatment as it applies to U.S. maritime.

Thank you.

Statement of Charles H. Lyles

Mr. Chairman, Members of the Senate Commerce Committee, ladies and gentlemen, my name is Charles H. Lyles. I am the Executive Secretary of the Louisiana Shrimp Association. Members of the Association include fishermen, processors, and marketers, as well as numerous supply and service firms that obtain their livelihood from this industry. I wish to thank you for the opportunity to express the concern of this organization about the condition of this important industry. I say important because shrimp is usually the number one money crop of U.S. Fisheries. Well over one hundred thousand people earn their living by catching, processing, marketing, or supplying and servicing the needs of the industry. Many small communities along the Gulf Coast are supported entirely by this industry. This includes the police and fire departments, schools, city government, and churches. The value of shrimp determines the quality of life in these communities.

That we are indeed in trouble needs no supporting data. You have only to visit these fishing villages and view the vessels and boats tied to the dock, in a rundown condition and in general disrepair. Even the processing plants are not being modernized. This inability to do the necessary preventive maintenance has resulted in an increase in accidents and in some instances loss of vessels at sea. This triggered rapid increases in insurance rates thus forcing many operators into bankruptcy or tying the vessel to the dock.

The industry has faced many unusual problems during the past five or six years. Among these are skyrocketing fuel costs, increase in insurance rates and soaring imports. The industry has been saved by three years in which there was an abun-

dance of shrimp. Two record years were established and there would doubtless have been a record in 1984 except that fewer vessels were operating caused chiefly by their inability to remain a viable business operation. Without help we will go the way of the tuna industry. From an important position in fishing industry, there remains only one tuna cannery on the Pacific Coast and that will probably close before the end of the year. What happened to these jobs?

Shrimp fishing has been a way of life along the Gulf Coast since the first European settlers arrived. The original gear was haul seines, but this gave way to the trawl as vessels changed from sail to petroleum power. Canning was perfected in the mid-1800's, an important step in expanding the market. With the development of ice making machines and the coming of railroads there was still greater expansion of the marketing of this delectable seafood. The industry grew, expanded and became more efficient as peeling machines were perfected and the product prepared in a number of ways for the consumers preference. Shrimp became the number one fishery.

Typically the shrimp fisherman is a small independent businessman as is the processor. He must be constantly alert to ways and methods of increasing his catch or processing a new or better product. In 1955, Texas fishermen began changing from the flat single trawl to a modified trawl and added an additional trawl so that a vessel then pulled two trawls. The efficiency of this change resulted in remarkably increased catches. Today some vessels regularly tow four trawls. Improvements and modifications are still going on, some of which are too new to be proven.

Not only were trawl designs undergoing rapid changes but so were the vessels. At the end of World War II, a 45-foot shrimp vessel was considered large. There were no accommodations on these vessels. Air conditioning was unknown and cured, canned or preserved foods were the staple fare supplemented by fresh food from the sea. Today vessels of 85-feet or more ply the Gulf from Key West to Brownsville and the fishermen enjoy hot and cold showers, frozen foods, air conditioning and even television. Many vessels are freezer equipped so that catches are frozen immediately after capture.

This rapid improvement in technology resulted in added investment in more and better equipment. The fishermen's increased earnings were not paid out in unproductive dividends nor placed in bank accounts but were plowed back into better and more productive equipment. The U.S. Shrimp Industry became the most efficient fishing industry in the world. The fishermen should have been able to enjoy the fruits of his labor and capital but he soon found himself surrounded by vessels owned by lawyers, doctors, and merchantmen. In many of these cases the skipper and the crew were inexperienced. The old time experienced shrimper saw his usual share of the resource taken by someone else.

While this was going on another competitor entered—imports. In 1939 imports of shrimp amounted to 3.9 million pounds, while the total U.S. catch was 89.4 million pounds. Per capita consumption was 0.48—or about a half pound for each person. Two years later in 1941, the U.S. government dispatched its most knowledgeable shrimp expert to Mexico to assist that country in developing its shrimp industry. No replacement was provided. This resulted in the curtailment of much needed research in this country and assisted in developing a competitor at taxpayer expense. By 1950 imports reached 40.2 million pounds, an increase of tenfold in 11 years, while domestic landings reached only 113.1 million pounds, an increase of about 20 percent. Enter a new monster called AID—Agency for International Development. This agency assisted foreign governments in developing their shrimp industry and built thousands of shrimp boats which they actually gave to foreign shrimping interest with taxpayer money. Enter another monster, the international bankers who not only loaned the capital for developing these foreign shrimp enterprises, but who got legislation through Congress to insure that in case the foreign government confiscated the property they would be paid for their investment—at taxpayer expense! Despite an adversary and unfriendly U.S. government the shrimp industry continued to become more efficient.

By 1970, U.S. landings amounted to 224.3 million pounds but imports reached 245.7 million pounds or 52.3 percent of the U.S. market. Per capita consumption had risen to 1.46. By 1983 U.S. landings were 155.6 million pounds but imports had reached 421.2 million pounds or 73% of the market and imports again increased in 1984 to over 422 million pounds.

Gentlemen, the U.S. Shrimp Industry—the most efficient in the world is faced with insurmountable problems of high fuel costs, high insurance—if you can obtain it, and soaring imports which depress prices. High fuel costs and increasing imports were problem enough, but they dwarf the present crisis in insurance.

Time did not permit me to gather extensive data on the insurance crisis, but the data I have can be considered conservatively representative of the crisis. One large firm in Mississippi whose insurance was to expire on March 31, 1985 suddenly found their coverage cancelled on March 3. Their premiums were $82,000 annually (P&I & Hull). When they were able to again obtain insurance it cost them $156,000 annually. In another instance in Mississippi, a fleet consisting of more than a half dozen vessels is tied to the wharf because of inability to obtain insurance.

Let us consider another fleet in Golden Meadow, Louisiana. An experienced and capable operator owns three vessels, approximately 85 feet in length costing approximately 400 thousand dollars each when constructed. Last year his premiums were $8,900 each while this year they are costing 13, 13, and 15 thousand dollars respectively. But gentlemen, the real crisis lies about 30 days ahead when the bulk of the fleet will be due and the spring shrimp season will be opening shortly thereafter.

While there are no sure fire solutions to this problem, I would like to suggest that we use foreign fishing fees to establish a cooperative insurance corporation for commercial fishing vessels. Insurance will be available only for those who can qualify. Among the qualifications would be the requirement for a licensed skipper. Second—the installation of specific safety devices to prevent accidents and thereby claims. This insurance should be patterned after your auto insurance. If I have an engine breakdown in my auto I pay for fixing—not so on a vessel under present insurance terms—some engines have been rebuilt a half dozen times with insurance paying. Next there should be a close look at the Jones Act as it applies to fishing boats. Perhaps what we need is a Workman's Compensation Act to cover fishing vessels only.

In any case gentlemen, a solution to this problem is essential if we are to continue to harvest seafood for the nations health and enjoyment.

I shall be happy to respond to your questions

MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, INC.,
Scituate, MA, March 22, 1985.

Hon. TED STEVENS,
Chairman, Merchant Marine Subcommittee, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Please accept our sincere apologies for not being able to attend your committee hearing on the subject of Fishing Vessel Safety and Insurance. We had initially accepted your invitation to appear and to testify, in the belief that the hearing was scheduled for Thursday, March 28, 1985. However, upon receiving your letter we learned that the hearing is scheduled for Monday, March 25, 1985 which is in conflict with a previous commitment that we must keep.

The subject, however, is of critical interest and concern to all commercial fishermen. Therefore, we have enclosed a copy of the testimony entitled, "Protection and Indemnity Clubs for Commercial Fishermen" which was prepared by our general counsel, Leonard Rose, Esquire.

We hope that once you, your committee, and members of your staff have had an opportunity to review this proposed option, that you will feel free to contact either Leonard Rose or this office for further information.

Thank you for your invitation to participate in the public process before your committee. We do sincerely regret that we are unable to attend but hope that the submission of the written proposal coupled with future communications will be helpful to your efforts to finding a solution to the problem of fishing vessel safety and insurance.

Respectfully,

ROY D. TATE,
Executive Director.

PROTECTION AND INDEMNITY CLUBS FOR COMMERCIAL FISHERMEN

(By Leonard Rose, A.B., J.D., LL.M., of the Massachusetts, New Hampshire, Illinois and District of Columbia Bars)

Protection and Indemnity Clubs, commonly known as P & I Clubs, have been in existence since the middle of the nineteenth century. They evolved from the protecting clubs which were first established in 1855 to protect their members against liabilities not covered by the marine insurance policies then available to them.

In England from 1719 to 1824, an Act of Parliament gave a marine insurance monopoly to two companies, the Royal Exchange Assurance and the London Assurance, although individual underwriters, such as those at Lloyd's Coffee House, were allowed to operate. However, because the two insurance companies' charges for insurance coverage were so high and their conditions so restrictive, shipping interests found it uneconomical to deal with them. In order to resolve their continuing needs for hull insurance, these shipowners formed illegal associations for the purpose of mutual insurance. By 1810, there were more than twenty of these illegal mutual insurance associations operating in England.

When the monopoly of the Royal Exchange Assurance and the London Assurance companies ended, many more companies entered the business of marine insurance and shipowners found greater opportunities outside of their previously illegal mutual hull underwriting associations to insure their risks. As a consequence, those with a better class of risk found that they could obtain better rates and conditions of insurance in "The Market", and the mutual clubs were gradually left only with the poorer risks. At this point, the mutual clubs would probably have gradually gone out of business, but they were given new life when events, the law, and perhaps a lack of insight and understanding on the part of marine insurers, gave the mutual clubs new areas in which to provide protection to shipowners against their liabilities.

Except as provided by statute or contract, the liability of a shipwner was that of a common carrier, but for most of the nineteenth century claims were not a serious burden. Cargo underwriters had not begun to exercise their rights of subrogation freely, and bills of lading did not contain the elaborate exceptions clauses that developed later.

In 1836, in the case of *De Vaux v. Salvador*, it was held that the liability of an insured vessel for damage done to another vessel in collision was not recoverable under the ordinary form of marine insurance policy. Coverage against liability for damage done by collision had already been available to shipowners for many years through their mutual clubs. After 1836, underwriters agreed to cover this by a Running Down Clause, but only to the extent of three-fourths of this liability.

By the middle of the nineteenth century, a flood of emigration from Europe to America was crowding ships crossing the Atlantic with passengers. In 1846, Lord Campbell's Act was passed, providing that where loss of life was caused by wrongful act, negligence or default of another person, the personal representative of the deceased could bring an action for damages against the party causing the death. At that time, a shipowner's liability for loss of life and personal injury was governed by the common law, and was unlimited. With their ships packed with passengers, shipowners were greatly concerned about their tremendous potential liability, and sought ways to reduce it. They did it in two ways.

First, the shipownes pressured for legislation to extend existing legislation which limited their liability for damage to property to the value of their interest in the vessel and its freight, so that it would apply to loss of life and personal injury, too. This was achieved through the Merchant Shipping Act of 1854, which limited the liability of a vessel owner for loss of life or personal injury to the value of the ship and freight, with a minimum liability of 15 Pounds per ton.

Even with their liability limited by the Merchant Shipping Act of 1854, shipowners found the burden of their potential liability too heavy, so they formed "Protecting Clubs". The language of the preface of the original deed of the first protection association, established in 1855, makes clear that the association was formed to protect shipowners against their liabilities for loss of life and personal injury under the Merchant Shipping Act of 1854 and also the risk of running down other vessels, to the extent not covered by their ordinary marine insurance policies. It appears that under the law of that time, insurance could not be obtained on a vessel and its freight in an amount greater than the value of the ship and its freight. The protecting clubs covered the excess liability over the value of the entered ship.

Another significant change occurred in 1870, when a ship named *Westenhope* was lost off of South Africa. On board was a quantity of cargo which should have been dischared at Port Elizabeth, but had been carried past and was intended to be discharged on the return trip to Cape Town. Because of the deviation, the shipowners were required to pay for the lost cargo. The court held that the shipowners could not rely on the exceptions in the bill of lading in regard to deviation. The ship was listed with a protecting association, but the directors of the association refused to reimburse the shipowners on the ground that the loss was not covered by the association's rules (although they made a token payment to close the matter).

As a result of the decision in the *Westenhope* case and the discovery that shipowners were subject to serious liabilities not covered by available insurance, certain

shipowners joined to establish the first mutual indemnity association, in 1874, to cover cargo claims. Later, protection associations and indemnity associations merged to become "protecting and indemnity associations". The membership and work of the indemnity associations grew rapidly as the liability of shipowners to cargo interests became apparent.

As the clubs grew in membership and gained experience, they began to require that their members contract away their liability for damage to cargo by perils of the sea or negligent navigation, or be subject to a 25% deduction from their claims for indemnity. The introduction of steamships and development of modern international trade caused the further development and evolvement of the protection and indemnity clubs, so that they began to exert a strong influence in behalf of shipowners in all matters affecting their business. P&I Clubs have been active in all phases of legislative and technical progress. They have been shaped by events and the law, and have themselves shaped events and the law.

Today, the mutual associations have expanded the scope of their interests and coverage so that there are now the Protection and Indemnity Clubs; War Risks Clubs; Freight, Demurrage & Defense Clubs; and Through Transit Clubs; all providing coverage for shipowners in their daily operations. There is no reason to believe that these Clubs will not continue to respond to the needs of the marine industry. One may expect that they will create new kinds of risk coverage and protection for marine interests as necessity dictates.

COVERAGE OF RISKS BY P&I CLUBS

For the most part, all British Protection and Indemnity Clubs cover the same types of risk, but there are differences in their franchise and recovery standards and in the way that vessels that are laid up are dealt with. To a great extent these differences exist because of the character of the members of the different clubs. Many clubs have both liner owners and tramp ship owners as members, but some may limit themselves either to liner owners or to tramp ship owners by not both.

The following are the the kinds of coverage that may be available to members of P&I Clubs:

(1) Member's liability for loss of life, personal injury or sickness risks, including crew hospital, medical and funeral expenses—usually subject to a minimum deductible.

(2) Member's liability for collision risks, and member's liability for damage to any fixed or movable object, and member's liability arising out of towage contracts and damage to other ships or property otherwise than by collision. (Some clubs may cover only ¼ of a member's liability for collision risks, with the member covering his liability otherwise through a policy containing the usual Running Down Clause, which covers only ¾ of that liability).

(3) Member's liability for cargo risks. Some clubs cover these risks under their Indemnity section; others may not make any distinction between Protection and Indemnity. The difference in club rules become more complex under this heading and can vary considerably. There can be a formula-based deductible, using size of the vessel and a cash standard as references, which differs for each type of loss claim. Classes of loss may be: Short delivery of general cargo, short delivery of cargo other than general, damage to cargo or responsibility arising out of shortage of fuel, damage to perishable cargo by reason of improper stowage, damage to cargo by engineroom or stokehold heat, etc. Another method is to limit the number of claims of certain classes of claims to a maximum amount per bill of lading and to a minimum deductible. Some clubs may exclude claims for passengers' baggage; others will accept such claims in with cargo claims.

(4) Member's costs and expenses, where they are incurred in respect to claims for which the member is protected by the club, or in support of some principle in relation to risks covered by the club, are usually recoverable in full from the club. Some clubs may limit the payment where the expenses are incurred as a result of interference (which club directors believe is unwarranted) by any authority, but others pay in full.

There may be a marked difference in the way clubs treat laid-up vessels. In some clubs, a member may take any vessel off risk for 30 consecutive days or more while it is in a safe port, and the member is not required to make contributions during this period unless the member makes a claim for loss arising during that period. Other clubs may, while a ship is laid-up in a safe port for a similar period, allow a return of calls at specific rates, e.g., 60 percent (both Protection and Indemnity), 75 percent if without cargo in the Protection Club, 90 percent if without cargo in the

Indemnity Club, and 95 percent if without cargo and crew in both the Protection and Indemnity Clubs.

In some clubs, the liability of the club may be unlimited; in others the club may limit its liability to a maximum amount in respect to claims arising out of any one occurrence.

In some clubs, all claims in respect to passengers are apportioned among the members according to the passage money earned by each, but in other clubs, passenger claims are contributed for in the same way as all other claims, i.e., on a tonnage basis.

WAR RISK CLUBS

At the latter part of the nineteenth century, the South American republics were subject to frequent revolutions, and marine underwriters were demanding heavy premiums for cancellation of the "free of capture and seizure" clauses in hull policies (which excluded any coverage of risks arising out of capture or seizure of the vessels). One of the British P&I Clubs agreed to cover war risks on a mutual basis, and inaugurated coverage of risks of war in which Britain was not involved, in December 1898. Later, the British government joined with the War Risk Clubs, in order to act with them in the event of war, with the government acting as reinsurer. In World War I and World War II, the government took over the entire responsibility for these risks, at a time when it was the only practical solution to the problem. One real problem that arose was the valuation to be placed on the vessels at the time of any loss, since the value of these vessels rose rapidly during the war years, and professional appraisers were unable to agree in every case to the value of a vessel when it was lost. After World War II, the British government made a new agreement with the War Risk Clubs providing for government reinsurance of the Clubs in case of war, with the insured values of the vessels being based on the cost of replacement less depreciation.

FREIGHT, DEMURRAGE, AND DEFENSE CLUBS

A number of clubs have formed "Freight, Demurrage and Defense" divisions to cover mainly legal, etc., expenses in enforcing the rights of the entered vessels or defending the vessel in respect to claims made against it. Some Defense Clubs not connected with P&I Clubs exist in London and elsewhere, usually managed by firms of solicitors.

THROUGH TRANSIT CLUBS

The latest member of the mutual club family is the Through Transit Club, which covers container operations and indemnifies container operators for damage, other than wear and tear, to the containers themselves and covers the cargo and third party liabilities arising from their operation on a door to door basis. These clubs may grow in importance as container operations increase.

PAST CLAIMS EXPERIENCE OF P&I CLUBS

For purposes of distinguishing between types of risk coverage, various classes have been established by Protection & Indemnity Clubs. For example: the Protecting and Indemnity Class; the Freight, Demurrage and Defense Class; Class 3 War Risks (Hulls); Class 4 War Risks (Freight); and Class 5 (Strikes).

One representative in its 1969/70 year reported a total of 3,487 claims settled for an aggregate of 991,349 Pounds (about $2,379,237.00), in respect to Protecting and Indemnity Class risks. During the period, there were 350 ships totalling 2,093,302 tons, entered in the Club's Protecting and Indemnity Class.

Another Club in its 1969–70 year reported 8.6 million tons in its Protecting and Indemnity Class. That Club in its 1969 year had Call and premium income of 2,700,622 Pounds to meet claims.

Each Club has its own practice in respect to Calls. Some require a large Advance Call, on the basis that the bulk of the estimated cost of claims for the year should be called up during the course of that year, with a small closing Call which is made when the actual experience for that year is known. Others may only require an Advance Call which approximates 50% of the estimated total claims, with additional Calls as they appear necessary.

OMNIBUS RULE PROTECTION

The so-called "Omnibus" Rule may be unique to P&I insurance. It gives a P&I Club's directors the discretion to meet as a claim against the Club the liabilities, costs or expenses incurred by a member shipowner which may be deemed to be "incidental to the business of shipowning".

This Rule gives great flexibility to P&I insurance, since it permits a Club's directors to deal sympathetically with any liability faced by a shipowner which is not specifically covered by any one of the other Rules of the Club. In the past, under this Rule, Club directors have reimbursed shipowners for losses caused by misappropriation of funds by dishonest agents, and have even paid for the costs of repairing buses driven and damaged by seamen who were skylarking while ashore from their vessels on liberty.

The "Omnibus" Rule permits a Club's directors to assume costs and expenses of defending a member shipowner's vessel against some local governmental action in a certain port, where the directors feel that it is important to the business of shipowning to oppose such action wherever it appears, even though no ordinary liability under the Club Rules is involved. A Club may go to considerable expense, including extended litigation, where the directors feel that there is a principle worth sustaining.

THE ADVANTAGES AND BENEFITS OF FISHERMEN'S P&I CLUBS

The viability of marine P&I Clubs during more than a century of extreme political, economic and technological changes is attributable to their great flexibility and utility in acting for their members. There is good reason to believe that the American fishing industry will be well served if various classes of fishermen can join into P&I Clubs to defend, protect and indemnify themselves on a mutual basis against claims and liabilities arising out of their separate operations.

Among the considerations which speak in favor of the establishment of fishermen's P&I Clubs are the following:

1. A single, expert claims staff can be maintained in each state or major seaport to act for the benefit of each Club member in matters arising there. A single, skilled investigation team can function in behalf of all members. Damage appraisal can be conducted on a "joint survey" basis, with claimants and owner interests agreeing to be bound by the findings of the damage surveyor. A single, experienced claims settlement staff can negotiate claims adjustments on a uniform basis, with final approval of settlements to be made by Club directors. This arrangement will eliminate the multiplicity of agencies performing a common service. The cost of such service will necessarily be lower to the individual shipowner member, while the quality of the service will be higher.

2. A system of Calls against Club members can be devised to spread out the contributions of Club members to satisfy claims against the Club, so that the member shipowners will have a more favorable cash flow than might be available to them under a system of insurance paid for by annual premiums. Since the directors will determine how and when Calls shall be made, the directors will choose a system which is most favorable to its member shipowners.

3. The use of a single claims adjustment office under the auspices of a mutually sponsored protection and indemnity association will promote uniform methods and practices of claims settlement among the members of the Club. As a result, a more realistic settlement can be offered to all claimants, based on actual legal liability and real damage appraisals, which will result in lower damage settlements on the average.

4. Through the expertise of the Club's managers a regional system of legal representatives, damage and loss appraisers, investigators and adjusters, can be set up and maintained on a stand-by basis. These representatives will be instructed to hold themselves available to act for the interests of the Club and its members whenever necessary, on an agreed fee basis. Because of their relationship to the Club, these representatives may be counted upon to observe and be aware of local incidents and conditions of concern to the Club, and to communicate with the Club's managers in case of emergencies requiring quick action. They will also become known to plaintiff's attorneys, and will serve to encourage amicable settlement of claims on an informal basis instead of through litigation. A claimant's attorney will prefer to call a Club's local lawyer about a new claim, in the hope of a speedy adjustment and settlement of a simple matter, rather than to file suit. The Club's local lawyer can then contact the Club's managers and make suggestiosn as to the disposition of the matter on a minimum cost basis, where he feels investigation time and expense would not be to the Club's benefit. All of this would be subject to the careful scruti-

ny and control of the directors of the Club, so that optimum settlements would be reached on an optimum cost basis.

5. Member shipowners will find Club offices available for arbitration and settlement of claims arising between members. Expert arbitrators with in-depth knowledge and experience will be able to understand and deal with technical facts and issues that would take weeks to present to a judge and jury if it were litigated in a court of law. The arbitration will be both speedy, of short duration, and fair in its outcome, since the Club arbitrators will be resolving the controversy in a manner which is consistent with the needs of the fishing industry over the long term.

6. Member vessel owners will have their primary liabilities covered on a mutual basis (subject to a small deductible), with re-insurance obtained by the Club to meet the contingency of a major disaster which is the basis of liability for one of more members. The combination of basic mutual protection and re-insurance of the Club as a group will provide excellent coverage of members' risks at the lowest possible expense and optimum use of operating cash.

7. In matters facing the fishing industry generally, the Club will be able to speak as a neutral but concerned organization, whose interests are not for profit but still related to, and dependent on, the profitable character of the industry.

8. Since a P&I Club is a mutual protection and indemnity association, it is not-for-profit in nature and Calls are based on actual claims experience plus costs of operation, with a small additional margin as a reserve against possible unusually large claims. The cost of this protection may be significantly lower than the cost of the same or similar protection through the use of customary commercial insurance policies.

9. Because a P&I Club is a mutual protection and indemnity association rather than an insurance company, it can assume responsibility for broader coverage of its members than will a commercial insurance company, and can make its coverage much more flexible than is available through any insurance policy, so that the unforeseeable risks and liabilities of any member can be covered at the discretion of the Club's directors. This relieves the members from the need to act as a self-insurer of many risks, and thus frees members' reserves to cover self-insurance items.

10. The claims experience of the Club can be utilized to analyze the standard practices of members, such as maintenance, repairs, etc., and may suggest possible changes and modification of these practices in order to limit members' liability for certain risks.

ORGANIZATION AND MANAGEMENT OF FISHERMEN'S P&I CLUBS

Since a fishermen's P&I Club need not be a profit-making organization, it may be structured in many possible forms. It need not be a corporation, since it does not assume the liabilities of its members in the place and stead of those members, any more than an insurance company does. Its obligation is to its own members and is based on its own Club Rules, rather than upon any direct liability for its members' acts. A suggested form, however, is a not-for-profit corporation, (although it can be structured as a limited liability company, business trust, joint venture, or even as a commercial corporation operated for profit), because under the provisions of Title 26, U.S. Code, section 526, the premiums received by a not-for-profit P&I CLub are not taxable income.

Assuming that a not-for-profit corporation is chosen as the structure for the Club, it should be capitalized with sufficient funds to set up offices, purchase the usual basic office equipment, hire a basic operating staff, and provide the initial expected expenses. The amount allocated for start up capital should be determined by the directors.

The Club policies and practices should be controlled by a Board of Directors. The Board should be composed of directors chosen from and elected by the members of the Club, plus additional directors who are expert in marine related matters and can give balance to the Board, expecially when matters which need expert opinions are before the Board.

The directors should meet at regular intervals, at least monthly, to discuss general policy, to consider amendments to the Club's Rules, and to pass on claims.

The daily affairs of the Club should be directed by a Manager and one or more Assistants, with a suitable staff. An alternative is for the Club's daily affairs to be in the hands of a firm that provides general management services in return for a commission based on the number and value of vessels and upon the number of members in the Club. This alternative is less desirable, since it does not allow the Club to build its own staff of experts over the years.

The Manager should administer the enrollment procedures for new members and new vessels. He should maintain the records of the Club and supervise the Call requirements. He should oversee the claims against Club members and arrange for appropriate investigation of damage and liability in each instance. He should supervise claims adjustment practices and expedite amicable settlements of all claims to the maximum possible extent, and present them to the Board of Directors for approval. He should carry out the plans and policies of the Board of Directors, and generally have charge of all of the general management functions of the Club.

There should be a separate Defense Division, under the supervision of the General Counsel and which is substantially autonomous in its usual operations except for the control of the Board of Directors. The Club Manager should provide support for the Defense Division, but should not have control over its functions.

The Defense Division will be expected to give advice and counsel to the Board of Directors concerning the Club's operations generally and in respect to specific defense and other matters pending or which may ripen into litigation. The Defense Division will be expected to establish a list of correspondent lawyers, and will arrange for these correspondent lawyers to appear and defend the Club and its members wherever their interests may appear. Wherever, under an "Omnibus" Rule (if enacted), the directors decide that the Club should intervene in any legal matter, the Defense Division will ordinarily make recommendations and see that the directors' policies are effectuated.

The Defense Division need not be integrated into the office operations of the general manager of the Club. Alternatively, it may be established in the form of an external Division, managed by the General Counsel outside of the Club and reporting either to the directors or to the Manager. Initially, it will be desirable to have a closely integrated Defense Division, so that all legal advice and action will be coordinated from a single source.

There may be a Re-Insurance Division, which need not be integrated into the office operations of the general manager of the Club, which administers the re-insurance programs of the Club in respect to its liabilities to its members under the Rules.

All memberships and vessels entered on the Club's rolls should be entered with respect to a fixed date each year, so that all Calls and rights may be based on the same fiscal year.

The Club will not issue policies, but when a vessel is accepted, it is entered on the books of the Club. This places the vessel on risk, and a certificate will be issued to that effect. The cover granted will be in accordance with the Club's Rules, which will either be incorporated in the Club's articles of association or will be structured in accordance with powers given by the articles of association. Each member will be given a Rule Book, and any difference of opinion as to the interpretation of the rules will be referred first to the Board of Directors. If the member does not accept the directors' decision, the question can be submitted to arbitration.

Vessel charterers may be allowed to join and enter the vessels they have chartered, to cover their liabilities as charterers, but such membership will have to be for a minimum period of at least 4 months (or more, if the directors so decide), and may be at a lower rate based on the limited nature of the cover to be provided.

Administrative expenses of the Club and its Divisions can be raised by charging a subscription fee, based on the member's entered vessels in each case, which shall be payable at the beginning of the fiscal year, with supplementary assessments if necessary. An Advance Call will be made at the beginning of each fiscal year, in proportion to the members' entered vessels, and, from time to time, as the need appears, Supplementary Calls will be made.

The Manager and Division heads will expect to be consulted by the members, and by the smaller vessel owners especially, on all manner of subjects, and will be depended on to give helpful advice and counsel.

SUGGESTED PRELIMINARY STEPS TOWARDS ORGANIZATION

Notwithstanding the apparent favorable factors which have been discussed, it would be substantially too difficult to establish a full-scale P&I Club operation on the part of commercial fishermen without advanced planning and programming, for obvious reasons. On the other hand, it may not be difficult to establish a P&I Club for the purposes of one or more classes of fishermen on a regional basis, and their experiences may serve as a test model for a full-scale P&I Club operation thereafter on a national basis.

It is suggested that one or more fishermen's P&I Clubs be established for the New England region, with membership open on a selected basis to vessels operating

there, and to any other shipowners who wish to join information and cooperation. A minimum of two years membership (subject to termination at the discretion of the directors) should be a requirement, in order to assure that support and cooperation will be available for a minimum period needed to obtain statistics which will prove the utility of a P&I Club and set minimum standards and Rules.

Approximately (6) months of planning and organizational work will be necessary to prepare the Club to operate. From and after a date certain, by agreement, all claims against member vessels will be submitted to the Club for handling and disposition, under Rules established by the directors during the first 6 months.

During the initial test period, while the Club is concerned only with claims arising with respect to the New England region, the Club should be managed by someone with administrative qualifications and experience in local marine and fishermen's claims. He will provide the special expertise needed to resolve the problems that inevitably will arise in this stage of the Club's operations. He should be assisted on a part-time basis by a qualified lawyer-Assistant Manager, who will succeed to the duties and office of General Counsel, when the Club's operations have stabilized and become routine.

During the first 6 months of planning and organizational work, the Club should also have the services of a Re-insurance expert, in order to set up protection for the Club against any excessive losses during the test period.

During the test period, investigation work may be arranged through independent contractors, in cases where member shipowners cannot perform the necessary investigations. Later, the Club may operate with its own staff wherever it is possible and economic to do so.

Administrative expenses during the test period will involve the compensation payable to the original manager, his assistant manager, clerical help and equipment, and office rent. In addition, there will be expenses connected with individual claims cases. The Re-insurance expert may be compensated, depending on arrangements made. There may be other reasonable expenses which become apparent.

It may well be that some fishermen's associations will want to share in the development of a fishermen's P&I Club but may be unable to participate directly in the first actual test of the concept in the New England region. Associations who do not operate in the area may still want to participate in the formative efforts of the Club. There would be only one obvious factor which would weigh against such participation.

The value of a common defense and claims adjustment organization lies, in part, in its tendency to discourage differing settlement practices from place to place. Those shipowners who operate in New England and who join the Club as active members will be directly involved in the development of such practices. Free access to all claims data by active members (through their directors on the Club's Board) will give them what they paid for by their contributions. On the other hand, if other shipowners and associations join the Club as observers only, they may gain information at no cost to themselves and benefit unfairly from the efforts of those who placed themselves at risk. Since they will not be participating in the first common risk coverage system, they will be able to plan their own, more sophisticated, P&I Club procedure without having to share the start up costs. This can be avoided and precluded by offering to such "observer" shipowners and associations an "associate membership".

Associate members can be enrolled in the Club for a subscription fee which contributes to the costs and expenses of administration of the Club, but without liabilities for Calls to pay claims. These associate members can be given non-voting directorships on the Club's Board of Directors, so that they can participate in policy and Rule-making discussions of the Board. They must be deprived of the right to vote, because the directors will have the power to control the amount and time of Calls and the scope of coverage of Club protection, as well as the approval of claims. On the other hand, they will have a persuasive voice in policy and Rule-making, since the future participation of their associations and vessels in the Club or in their own clubs as active members will depend on the degree to which the Club's policies and Rules conform to their views.

In order to prevent improper disclosure of competitively valuable information to associate members, all claims files can be identified by number and be kept anonymous insofar as associate members are concerned. Associate members should have no access to claims files, but may have access to claims statistics, and may participate when the voting directors deem it appropriate in discussions of claims.

If a number of fishermen's associations participate as associate members, and if these associate members contribute assistance in the form of advice and general sta-

tistics concerning their own past experiences, the cost of establishing the Club may be reduced considerably, while providing maximum benefits to all concerned.

NEEDED LEGISLATION

One of the major problems which prevents fishermen from forming self-insurance groups is the restriction imposed by state insurance laws. If the federal Risk Retention Act of 1981 is used as a model, a statute can be drafted which allows fishing vessel owners and fishermen's associations to form their own captive insurance companies which are allowed to sell marine, automobile, truck, homeowners and health insurance to members and their employees. The statute can provide that reinsurances shall be an acceptable means of establishing minimum capital and reserves. Bermuda and/or Cayman Island captive corporations should be eligible, and should be entitled to sell insurance to American fishermen.

Another major problem is funding. The fishing industry of the United States is not subsidized in its regular operating expenses. Fishermen and their associations do not have the resources to underwrite the P&I Club experiment envisioned by this article. It may be appropriate for the Congress to allocate a grant of funds which will pay the start up costs and underwrite the losses, if any, in excess of the income and reinsurances received after payment of administrative expenses and claims. Without federal funding, it is unlikely that the fishing industry will be able to institute this program, even if appropriate legislation eliminates the legal obstacles now present. The amount of funding should not be more than $3 or $4 million for start up and a regional test over a two year period. If the fishing industry is to retain its viability, it needs this support from the Congress.

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, October 10, 1985.

Hon. TED STEVENS,
Chairman, Senate Subcommittee on Merchant Marine, Senate Committee of Commerce, Science, and Transportation, Washington, DC.

DEAR MR. CHAIRMAN: The State of Alaska would like to submit the following comments regarding the issue of fishing vessel insurance which is the subject of today's hearing.

Affordable insurance is an essential component of a successful fishing operation. Large claims, decreased investment returns, and generally poor profit margins have caused some underwriters to discontinue writing insurance for fishing vessels. It has been reported that some premiums have increased as much as 900%. Since insurance is absolutely necessary to obtain financing, many fishermen are faced with a serious economic dilemma.

The issue is national in scope and not one specific to the Pacific Northwest. A great deal of attention has been directed, however, at losses sustained in recent years by larger vessels operating in the Bering Sea crab fishery. The probable causes of such losses include: improper loading resulting in vessel instability, risks taken by fishermen in intensely competitive fisheries, and lack of experienced crews to man an expanding number of vessels.

Alaskans are concerned that losses related to vessels engaged in Bering Sea fisheries adversely and unfairly affect premium rates in other fisheries and other areas of the State. Many fishermen who fish older boats, particularly wooden vessels, fear that arbitrary vessel age and construction criteria will deprive them of insurance regardless of their operating records or of the actual condition of their vessels.

Insurance companies indicate that it is difficult to stay adequately informed about conditions in the Alaska fishing industry and that additional data are necessary to define categories of risk that properly represent actual conditions. The success of fishing vessel marine insurance pools in the Pacific Northwest has demonstrated the value of accepting risks through intimate knowledge of individual operators and their vessels.

A fair, accurate system to rate risk is necessary. The first step would be to acquire and analyze information to identify and measure critical factors likely to influence vessel losses and personal injuries. Some funds could be made available for this purpose through the Saltonstall-Kennedy program administered by the National Marine Fisheries Service.

Better data concerning the causes of past losses and injuries will also make action to encourage safer vessel operations more effective. The State of Alaska supports the voluntary safety program undertaken by the U.S. Coast Guard and the North

Pacific Fishing Vessel Owners Association. This program consists of technical navigation and inspection circulars to be published shortly as proposed standards, together with safety awareness materials and presentations aimed at vessel operators. With adequate financial support, and the cooperation of the insurance industry, this program should help reduce vessel losses and personal injuries.

We would appreciate your including this correspondence in the hearing record. Thank you for the opportunity to express our concerns.

Sincerely,

BILL SHEFFIELD, *Governor.*

STATEMENT OF EDWARD J. BUCHWALD, JOHNSON & HIGGINS, SEATTLE, WA

My name is Edward J. Buchwald. I am a senior vice president of Johnson & Higgins of Wahington, a commercial insurance brokerage firm. We are a national firm, and I have been employed in the Seattle office since 1970. I am currently the Marine Department manager and have been active in the fishing vessel insurance market thoughout my Johnson & Higgins employment and an additional three years as a local agent in Kodiak, Alaska. My experience with insuring fishing vessels is limited to the Northwest and Alaska. Accordingly, my comments will address the fishing vessel insurance industry in these areas.

For various reasons, the insurance market is cyclical in nature. A financially stable, experienced, and loss-free skipper with a new, well maintained vessel might buy hull insurance subject to a rate of 1.5 percent of hull value in a buyers' insurance market. The same individual and vessel in a sellers' insurance market might have to pay as much as five percent. We are currently in a sellers' insurance market, and the transition occurred over a year ago when several insurance companies with large fish boat insurance portfolios decided to get out of the business, alleging disastrous loss history. As a result, we now have a fish boat insurance marketplace which is charging what it feels are equitable rates and which is scrutinizing very closely the risks they are willing to accept.

The fish boat insurance marketplace today is not really much different than it was in the late '60s when I recall rates as high as 10 percent for hull and machinery insurance. However, even now we have a large crab boat fleet which operates in the Bering Sea at an average hull and machinery rate of approximately three percent. The fleet is financially stable and has consistently made a profit for the underwriters for the past five years. Luckily, these underwriters were very selective and did not write much fish boat business outside of this fleet. They have elected to stay with the profitable venture and are recognizing past loyalty by not making this fleet pay a much higher rate which they could easily do under current market conditions.

Depending on the type of fishery, if a quality fleet came to us today, we could probably market their hull and machinery insurance somewhere in the range of four percent to six percent of hull values. Depending on the fishery, area of operation, and length of operation, individual fishing boats can still be placed in the same range if they are loss free and considered a quality risk. With a few exceptions, good hull and machinery risks can still purchase insurance at what we feel are reasonable rates.

Unprofitable operators, old vessels and those with a claim history are the risks which have the problems. I do not think it is fair to blame the insurance industry for not accepting these risks, and furthermore, they might be doing the good, claim-free operators a disservice by writing the poor risks and ultimately driving claims and attendant rates higher.

In summary, I do not think a crisis exists concerning hull and machinery insurance for the Northwest fishing industry.

Protection and indemnity insurance is another matter. The insurance companies willing to write protection and indemnity insurance on a fish boat are limited. The capacity or supply of available protection and indemnity insurance is limited because insurance companies typically restrict their premiums to a multiple of their policyholders surplus. One of the few major protection and indemnity underwriters has already reached that limit and cannot accept any new business for the remainder of this year.

None of the major stock insurance companies will underwrite the fish boat protection and indemnity in the Northwest, because they do not feel premiums will support the claims. Some of the insurance companies that have participated in this type of business in the past are now insolvent and cannot pay claims which have been incurred or judgments which have been rendered.

Although the premiums are relatively high when compared with those in the buyers' insurance market, they are perhaps warranted and are certainly affordable for a profitable fisherman. The real problem concerning protection and indemnity is its availability and the financial security of the insurance company willing to write it.

To me a logical solution to this problem is to include fishermen under state workers' compensation laws and make this their only remedy if injured. This may not be a practical solution. It would require legislation and, in today's litigious atmosphere, would be tested in the court system. An alternative solution might be limiting "general damage" awards to a certain amount such as is being done with medical malpractice in some states.

I have stated some of my comments on the insurance aspect of the fishing industry and am certainly available to answer questions at any time.

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